

## [COMMITTEE PRINT]

MARCH 25, 2003

108TH CONGRESS  
1ST SESSION

# H. R. 810

To amend title XVIII of the Social Security Act to provide regulatory relief  
and contracting flexibility under the Medicare Program.

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### IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2003

Mrs. JOHNSON of Connecticut (for herself, Mr. STARK, Mr. BILIRAKIS, Mr. BROWN of Ohio, Mr. THOMAS, Mr. RANGEL, Mr. TAUZIN, Mr. DINGELL, Mr. RYAN of Wisconsin, Mr. PORTMAN, Mr. CARDIN, Ms. DUNN, Mr. GREENWOOD, Mr. KLECZKA, Mr. LEWIS of Kentucky, Mr. CAMP, Mr. POMEROY, Mr. SHAW, Mr. BURR, Mr. McNULTY, Mrs. JONES of Ohio, Mr. CRANE, Mr. McINNIS, Mr. RAMSTAD, Mr. ENGLISH, Mr. McDERMOTT, Mr. McCRERY, Mr. HAYWORTH, Mr. HOUGHTON, Mr. NUSSLE, Mr. NORWOOD, Mr. GORDON, Mr. UPTON, Mr. ENGEL, Mr. BUYER, Mr. PICKERING, Mr. BARTON of Texas, Mr. DOYLE, Mrs. CAPPS, Mr. WAXMAN, Mr. PALLONE, Mr. HALL, Mr. SAM JOHNSON of Texas, Mr. CANTOR, Mr. FOLEY, Mr. WELLER, and Mr. DEUTSCH) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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MARCH 20, 2003

Reported from the Subcommittee on Health with an amendment



[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on February 13, 2003]

# A BILL

To amend title XVIII of the Social Security Act to provide regulatory relief and contracting flexibility under the Medicare Program.

1 *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENTS TO SOCIAL SECU-**

4 **RITY ACT; TABLE OF CONTENTS.**

5 (a) *SHORT TITLE.*—*This Act may be cited as the*

6 *“Medicare Regulatory and Contracting Reform Act of*

7 *2003”.*

8 (b) *AMENDMENTS TO SOCIAL SECURITY ACT.*—*Except*

9 *as otherwise specifically provided, whenever in this Act an*

10 *amendment is expressed in terms of an amendment to or*

11 *repeal of a section or other provision, the reference shall*

12 *be considered to be made to that section or other provision*

13 *of the Social Security Act.*

14 (c) *TABLE OF CONTENTS.*—*The table of contents of this*

15 *Act is as follows:*

*Sec. 1. Short title; amendments to Social Security Act; table of contents.*

*Sec. 2. Findings and construction.*

*Sec. 3. Definitions.*

## TITLE I—REGULATORY REFORM

*Sec. 101. Issuance of regulations.*

*Sec. 102. Compliance with changes in regulations and policies.*

*Sec. 103. Reports and studies relating to regulatory reform.*



*TITLE II—CONTRACTING REFORM**Sec. 201. Increased flexibility in medicare administration.**Sec. 202. Requirements for information security for medicare administrative contractors.**TITLE III—EDUCATION AND OUTREACH**Sec. 301. Provider education and technical assistance.**Sec. 302. Small provider technical assistance demonstration program.**Sec. 303. Medicare Provider Ombudsman; Medicare Beneficiary Ombudsman.**Sec. 304. Beneficiary outreach demonstration program.**Sec. 305. Inclusion of additional information in notices to beneficiaries about skilled nursing facility benefits.**Sec. 306. Information on medicare-certified skilled nursing facilities in hospital discharge plans.**TITLE IV—APPEALS AND RECOVERY**Sec. 401. Transfer of responsibility for medicare appeals.**Sec. 402. Process for expedited access to review.**Sec. 403. Revisions to medicare appeals process.**Sec. 404. Prepayment review.**Sec. 405. Recovery of overpayments.**Sec. 406. Provider enrollment process; right of appeal.**Sec. 407. Process for correction of minor errors and omissions without pursuing appeals process.**Sec. 408. Prior determination process for certain items and services; advance beneficiary notices.**TITLE V—MISCELLANEOUS PROVISIONS**Sec. 501. Policy development regarding evaluation and management (E & M) documentation guidelines.**Sec. 502. Improvement in oversight of technology and coverage.**Sec. 503. Treatment of hospitals for certain services under medicare secondary payor (MSP) provisions.**Sec. 504. EMTALA improvements.**Sec. 505. Emergency Medical Treatment and Active Labor Act (EMTALA) Technical Advisory Group.**Sec. 506. Authorizing use of arrangements to provide core hospice services in certain circumstances.**Sec. 507. Application of OSHA bloodborne pathogens standard to certain hospitals.**Sec. 508. BIPA-related technical amendments and corrections.**Sec. 509. Conforming authority to waive a program exclusion.**Sec. 510. Treatment of certain dental claims.**Sec. 511. Furnishing hospitals with information to compute DSH formula.**Sec. 512. Miscellaneous reports, studies, and publication requirements.***1 SEC. 2. FINDINGS AND CONSTRUCTION.****2 (a) FINDINGS.—Congress finds the following:**

1           (1) *The overwhelming majority of providers of*  
2           *services and suppliers in the United States are law-*  
3           *abiding persons who provide important health care*  
4           *services to patients each day.*

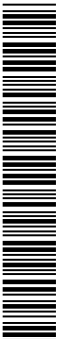
5           (2) *The Secretary of Health and Human Serv-*  
6           *ices should work to streamline paperwork require-*  
7           *ments under the medicare program and communicate*  
8           *clearer instructions to providers of services and sup-*  
9           *pliers so that they may spend more time caring for*  
10          *patients.*

11          (b) *CONSTRUCTION.—Nothing in this Act shall be*  
12          *construed—*

13               (1) *to compromise or affect existing legal rem-*  
14               *edies for addressing fraud or abuse, whether it be*  
15               *criminal prosecution, civil enforcement, or adminis-*  
16               *trative remedies, including under sections 3729*  
17               *through 3733 of title 31, United States Code (known*  
18               *as the False Claims Act); or*

19               (2) *to prevent or impede the Department of*  
20               *Health and Human Services in any way from its on-*  
21               *going efforts to eliminate waste, fraud, and abuse in*  
22               *the medicare program.*

23          *Furthermore, the consolidation of medicare administrative*  
24          *contracting set forth in this Act does not constitute consoli-*  
25          *dation of the Federal Hospital Insurance Trust Fund and*



1 *the Federal Supplementary Medical Insurance Trust Fund*  
2 *or reflect any position on that issue.*

3 **SEC. 3. DEFINITIONS.**

4 (a) *USE OF TERM SUPPLIER IN MEDICARE.*—Section  
5 1861 (42 U.S.C. 1395x) is amended by inserting after sub-  
6 section (c) the following new subsection:

7 “Supplier

8 “(d) The term ‘supplier’ means, unless the context oth-  
9 erwise requires, a physician or other practitioner, a facility,  
10 or other entity (other than a provider of services) that fur-  
11 nishes items or services under this title.”.

12 (b) *OTHER TERMS USED IN ACT.*—In this Act:

13 (1) *BIPA.*—The term “BIPA” means the Medi-  
14 care, Medicaid, and SCHIP Benefits Improvement  
15 and Protection Act of 2000, as enacted into law by  
16 section 1(a)(6) of Public Law 106–554.

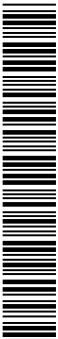
17 (2) *SECRETARY.*—The term “Secretary” means  
18 the Secretary of Health and Human Services.

19 **TITLE I—REGULATORY REFORM**

20 **SEC. 101. ISSUANCE OF REGULATIONS.**

21 (a) *LIMITATIONS ON NEW MATTER IN FINAL REGULA-*  
22 *TIONS.*—Section 1871(a) (42 U.S.C. 1395hh(a)) is amended  
23 by adding at the end the following new paragraph:

24 “(3) If the Secretary publishes a final regulation that  
25 includes a provision that is not a logical outgrowth of a



1 *previously published notice of proposed rulemaking or in-*  
2 *terim final rule, such provision shall be treated as a pro-*  
3 *posed regulation and shall not take effect until there is the*  
4 *further opportunity for public comment and a publication*  
5 *of the provision again as a final regulation.”.*

6 (b) *EFFECTIVE DATE.*—*The amendment made by sub-*  
7 *section (a) shall apply to final regulations published on or*  
8 *after the date of the enactment of this Act.*

9 **SEC. 102. COMPLIANCE WITH CHANGES IN REGULATIONS**  
10 **AND POLICIES.**

11 (a) *NO RETROACTIVE APPLICATION OF SUBSTANTIVE*  
12 *CHANGES.*—

13 (1) *IN GENERAL.*—*Section 1871 (42 U.S.C.*  
14 *1395hh), as amended by section 101(a), is amended*  
15 *by adding at the end the following new subsection:*

16 “(e)(1)(A) *A substantive change in regulations, man-*  
17 *ual instructions, interpretative rules, statements of policy,*  
18 *or guidelines of general applicability under this title shall*  
19 *not be applied (by extrapolation or otherwise) retroactively*  
20 *to items and services furnished before the effective date of*  
21 *the change, unless the Secretary determines that—*

22 “(i) *such retroactive application is necessary to*  
23 *comply with statutory requirements; or*

24 “(ii) *failure to apply the change retroactively*  
25 *would be contrary to the public interest.”.*

1           (2) *EFFECTIVE DATE.*—*The amendment made by*  
2       *paragraph (1) shall apply to substantive changes*  
3       *issued on or after the date of the enactment of this*  
4       *Act.*

5       (b) *TIMELINE FOR COMPLIANCE WITH SUBSTANTIVE*  
6       *CHANGES AFTER NOTICE.*—

7           (1) *IN GENERAL.*—*Section 1871(e)(1), as added*  
8       *by subsection (a), is amended by adding at the end*  
9       *the following:*

10       “(B)(i) *Except as provided in clause (ii), a substantive*  
11       *change referred to in subparagraph (A) shall not become*  
12       *effective before the end of the 30-day period that begins on*  
13       *the date that the Secretary has issued or published, as the*  
14       *case may be, the substantive change.*

15       “(ii) *The Secretary may provide for such a substantive*  
16       *change to take effect on a date that precedes the end of the*  
17       *30-day period under clause (i) if the Secretary finds that*  
18       *waiver of such 30-day period is necessary to comply with*  
19       *statutory requirements or that the application of such 30-*  
20       *day period is contrary to the public interest. If the Sec-*  
21       *retary provides for an earlier effective date pursuant to this*  
22       *clause, the Secretary shall include in the issuance or publi-*  
23       *cation of the substantive change a finding described in the*  
24       *first sentence, and a brief statement of the reasons for such*  
25       *finding.*

1       “(C) No action shall be taken against a provider of  
2 services or supplier with respect to noncompliance with  
3 such a substantive change for items and services furnished  
4 before the effective date of such a change.”.

5           (2) *EFFECTIVE DATE.*—The amendment made by  
6 paragraph (1) shall apply to compliance actions un-  
7 dertaken on or after the date of the enactment of this  
8 Act.

9           (c) *RELIANCE ON GUIDANCE.*—

10           (1) *IN GENERAL.*—Section 1871(e), as added by  
11 subsection (a), is further amended by adding at the  
12 end the following new paragraph:

13       “(2)(A) If—

14           “(i) a provider of services or supplier follows the  
15 written guidance (which may be transmitted elec-  
16 tronically) provided by the Secretary or by a medi-  
17 care contractor (as defined in section 1889(g)) acting  
18 within the scope of the contractor’s contract authority,  
19 with respect to the furnishing of items or services and  
20 submission of a claim for benefits for such items or  
21 services with respect to such provider or supplier;

22           “(ii) the Secretary determines that the provider  
23 of services or supplier has accurately presented the  
24 circumstances relating to such items, services, and  
25 claim to the contractor in writing; and



1           “(iii) the guidance was in error;  
2 the provider of services or supplier shall not be subject to  
3 any sanction (including any penalty or requirement for re-  
4 payment of any amount) if the provider of services or sup-  
5 plier reasonably relied on such guidance.

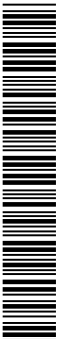
6           “(B) Subparagraph (A) shall not be construed as pre-  
7 venting the recoupment or repayment (without any addi-  
8 tional penalty) relating to an overpayment insofar as the  
9 overpayment was solely the result of a clerical or technical  
10 operational error.”.

11           (2) *EFFECTIVE DATE.*—The amendment made by  
12 paragraph (1) shall take effect on the date of the en-  
13 actment of this Act but shall not apply to any sanc-  
14 tion for which notice was provided on or before the  
15 date of the enactment of this Act.

16 **SEC. 103. REPORTS AND STUDIES RELATING TO REGU-**  
17 **LATORY REFORM.**

18           (a) *GAO STUDY ON ADVISORY OPINION AUTHORITY.*—

19           (1) *STUDY.*—The Comptroller General of the  
20 United States shall conduct a study to determine the  
21 feasibility and appropriateness of establishing in the  
22 Secretary authority to provide legally binding advi-  
23 sory opinions on appropriate interpretation and ap-  
24 plication of regulations to carry out the medicare pro-  
25 gram under title XVIII of the Social Security Act.



1       *Such study shall examine the appropriate timeframe*  
2       *for issuing such advisory opinions, as well as the need*  
3       *for additional staff and funding to provide such opin-*  
4       *ions.*

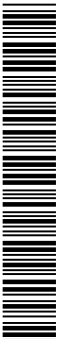
5           (2) *REPORT.—The Comptroller General shall*  
6       *submit to Congress a report on the study conducted*  
7       *under paragraph (1) by not later than one year after*  
8       *the date of the enactment of this Act.*

9       (b) *REPORT ON LEGAL AND REGULATORY INCONSIST-*  
10      *ENCIES.—Section 1871 (42 U.S.C. 1395hh), as amended by*  
11      *section 2(a), is amended by adding at the end the following*  
12      *new subsection:*

13           “(f)(1) *Not later than 2 years after the date of the en-*  
14      *actment of this subsection, and every 2 years thereafter, the*  
15      *Secretary shall submit to Congress a report with respect*  
16      *to the administration of this title and areas of inconsistency*  
17      *or conflict among the various provisions under law and reg-*  
18      *ulation.*

19           “(2) *In preparing a report under paragraph (1), the*  
20      *Secretary shall collect—*

21           “(A) *information from individuals entitled to*  
22      *benefits under part A or enrolled under part B, or*  
23      *both, providers of services, and suppliers and from the*  
24      *Medicare Beneficiary Ombudsman and the Medicare*



1       *Provider Ombudsman with respect to such areas of*  
2       *inconsistency and conflict; and*

3               “(B) information from medicare contractors that  
4       *tracks the nature of written and telephone inquiries.*

5       “(3) A report under paragraph (1) shall include a de-  
6       *scription of efforts by the Secretary to reduce such inconsist-*  
7       *ency or conflicts, and recommendations for legislation or*  
8       *administrative action that the Secretary determines appro-*  
9       *priate to further reduce such inconsistency or conflicts.”.*

10               ***TITLE II—CONTRACTING***  
11               ***REFORM***

12       ***SEC. 201. INCREASED FLEXIBILITY IN MEDICARE ADMINIS-***  
13               ***TRATION.***

14       *(a) CONSOLIDATION AND FLEXIBILITY IN MEDICARE*  
15       *ADMINISTRATION.—*

16               *(1) IN GENERAL.—Title XVIII is amended by in-*  
17       *serting after section 1874 the following new section:*

18               ***“CONTRACTS WITH MEDICARE ADMINISTRATIVE***  
19               ***CONTRACTORS***

20       ***“SEC. 1874A. (a) AUTHORITY.—***

21               ***“(1) AUTHORITY TO ENTER INTO CONTRACTS.—***

22       *The Secretary may enter into contracts with any eli-*  
23       *gible entity to serve as a medicare administrative*  
24       *contractor with respect to the performance of any or*  
25       *all of the functions described in paragraph (4) or*  
26       *parts of those functions (or, to the extent provided in*

1       *a contract, to secure performance thereof by other en-*  
2       *tities).*

3               “(2) *ELIGIBILITY OF ENTITIES.*—*An entity is el-*  
4       *igible to enter into a contract with respect to the per-*  
5       *formance of a particular function described in para-*  
6       *graph (4) only if—*

7               “(A) *the entity has demonstrated capability*  
8       *to carry out such function;*

9               “(B) *the entity complies with such conflict*  
10       *of interest standards as are generally applicable*  
11       *to Federal acquisition and procurement;*

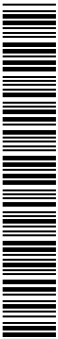
12               “(C) *the entity has sufficient assets to fi-*  
13       *nancially support the performance of such func-*  
14       *tion; and*

15               “(D) *the entity meets such other require-*  
16       *ments as the Secretary may impose.*

17               “(3) *MEDICARE ADMINISTRATIVE CONTRACTOR*  
18       *DEFINED.*—*For purposes of this title and title XI—*

19               “(A) *IN GENERAL.*—*The term ‘medicare ad-*  
20       *ministrative contractor’ means an agency, orga-*  
21       *nization, or other person with a contract under*  
22       *this section.*

23               “(B) *APPROPRIATE MEDICARE ADMINISTRA-*  
24       *TIVE CONTRACTOR.*—*With respect to the perform-*  
25       *ance of a particular function in relation to an*

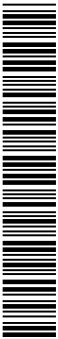


1           *individual entitled to benefits under part A or*  
2           *enrolled under part B, or both, a specific pro-*  
3           *vider of services or supplier (or class of such pro-*  
4           *viders of services or suppliers), the ‘appropriate’*  
5           *medicare administrative contractor is the medi-*  
6           *care administrative contractor that has a con-*  
7           *tract under this section with respect to the per-*  
8           *formance of that function in relation to that in-*  
9           *dividual, provider of services or supplier or class*  
10          *of provider of services or supplier.*

11          “(4) *FUNCTIONS DESCRIBED.*—*The functions re-*  
12          *ferred to in paragraphs (1) and (2) are payment*  
13          *functions, provider services functions, and functions*  
14          *relating to services furnished to individuals entitled*  
15          *to benefits under part A or enrolled under part B, or*  
16          *both, as follows:*

17               “(A)   *DETERMINATION    OF    PAYMENT*  
18               *AMOUNTS.*—*Determining (subject to the provi-*  
19               *sions of section 1878 and to such review by the*  
20               *Secretary as may be provided for by the con-*  
21               *tracts) the amount of the payments required pur-*  
22               *suant to this title to be made to providers of*  
23               *services, suppliers and individuals.*

24               “(B)   *MAKING    PAYMENTS.*—*Making pay-*  
25               *ments described in subparagraph (A) (including*



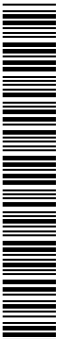
1           *receipt, disbursement, and accounting for funds*  
2           *in making such payments).*

3           “(C) *BENEFICIARY EDUCATION AND ASSIST-*  
4           *ANCE.—Providing education and outreach to in-*  
5           *dividuals entitled to benefits under part A or en-*  
6           *rolled under part B, or both, and providing as-*  
7           *sistance to those individuals with specific issues,*  
8           *concerns or problems.*

9           “(D) *PROVIDER CONSULTATIVE SERV-*  
10           *ICES.—Providing consultative services to institu-*  
11           *tions, agencies, and other persons to enable them*  
12           *to establish and maintain fiscal records nec-*  
13           *essary for purposes of this title and otherwise to*  
14           *qualify as providers of services or suppliers.*

15           “(E) *COMMUNICATION WITH PROVIDERS.—*  
16           *Communicating to providers of services and sup-*  
17           *pliers any information or instructions furnished*  
18           *to the medicare administrative contractor by the*  
19           *Secretary, and facilitating communication be-*  
20           *tween such providers and suppliers and the Sec-*  
21           *retary.*

22           “(F) *PROVIDER EDUCATION AND TECHNICAL*  
23           *ASSISTANCE.—Performing the functions relating*  
24           *to provider education, training, and technical*  
25           *assistance.*



1           “(G) *ADDITIONAL FUNCTIONS.*—*Performing*  
2           *such other functions as are necessary to carry*  
3           *out the purposes of this title.*

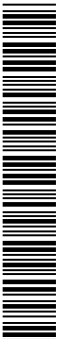
4           “(5) *RELATIONSHIP TO MIP CONTRACTS.*—

5           “(A) *NONDUPLICATION OF DUTIES.*—*In en-*  
6           *tering into contracts under this section, the Sec-*  
7           *retary shall assure that functions of medicare*  
8           *administrative contractors in carrying out ac-*  
9           *tivities under parts A and B do not duplicate*  
10          *activities carried out under the Medicare Integ-*  
11          *egrity Program under section 1893. The previous*  
12          *sentence shall not apply with respect to the ac-*  
13          *tivity described in section 1893(b)(5) (relating to*  
14          *prior authorization of certain items of durable*  
15          *medical equipment under section 1834(a)(15)).*

16          “(B) *CONSTRUCTION.*—*An entity shall not*  
17          *be treated as a medicare administrative con-*  
18          *tractor merely by reason of having entered into*  
19          *a contract with the Secretary under section*  
20          *1893.*

21          “(6) *APPLICATION OF FEDERAL ACQUISITION*  
22          *REGULATION.*—*Except to the extent inconsistent with*  
23          *a specific requirement of this title, the Federal Acqui-*  
24          *sition Regulation applies to contracts under this title.*

25          “(b) *CONTRACTING REQUIREMENTS.*—

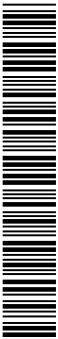


1           “(1) *USE OF COMPETITIVE PROCEDURES.*—

2                   “(A) *IN GENERAL.*—*Except as provided in*  
3           *laws with general applicability to Federal acqui-*  
4           *sition and procurement or in subparagraph (B),*  
5           *the Secretary shall use competitive procedures*  
6           *when entering into contracts with medicare ad-*  
7           *ministrative contractors under this section, tak-*  
8           *ing into account performance quality as well as*  
9           *price and other factors.*

10                   “(B) *RENEWAL OF CONTRACTS.*—*The Sec-*  
11           *retary may renew a contract with a medicare*  
12           *administrative contractor under this section*  
13           *from term to term without regard to section 5 of*  
14           *title 41, United States Code, or any other provi-*  
15           *sion of law requiring competition, if the medi-*  
16           *care administrative contractor has met or ex-*  
17           *ceeded the performance requirements applicable*  
18           *with respect to the contract and contractor, ex-*  
19           *cept that the Secretary shall provide for the ap-*  
20           *plication of competitive procedures under such a*  
21           *contract not less frequently than once every five*  
22           *years.*

23                   “(C) *TRANSFER OF FUNCTIONS.*—*The Sec-*  
24           *retary may transfer functions among medicare*  
25           *administrative contractors consistent with the*





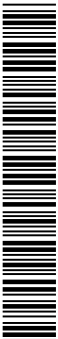
1        *provisions of this paragraph. The Secretary shall*  
2        *ensure that performance quality is considered in*  
3        *such transfers. The Secretary shall provide pub-*  
4        *lic notice (whether in the Federal Register or*  
5        *otherwise) of any such transfer (including a de-*  
6        *scription of the functions so transferred, a de-*  
7        *scription of the providers of services and sup-*  
8        *pliers affected by such transfer, and contact in-*  
9        *formation for the contractors involved).*

10            *“(D) INCENTIVES FOR QUALITY.—The Sec-*  
11            *retary shall provide incentives for medicare ad-*  
12            *ministrative contractors to provide quality serv-*  
13            *ice and to promote efficiency.*

14            *“(2) COMPLIANCE WITH REQUIREMENTS.—No*  
15            *contract under this section shall be entered into with*  
16            *any medicare administrative contractor unless the*  
17            *Secretary finds that such medicare administrative*  
18            *contractor will perform its obligations under the con-*  
19            *tract efficiently and effectively and will meet such re-*  
20            *quirements as to financial responsibility, legal au-*  
21            *thority, quality of services provided, and other mat-*  
22            *ters as the Secretary finds pertinent.*

23            *“(3) PERFORMANCE REQUIREMENTS.—*

24            *“(A) DEVELOPMENT OF SPECIFIC PERFORM-*  
25            *ANCE REQUIREMENTS.—In developing contract*



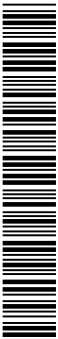
1           *performance requirements, the Secretary shall*  
2           *develop performance requirements applicable to*  
3           *functions described in subsection (a)(4).*

4           “(B) *CONSULTATION.*— *In developing such*  
5           *requirements, the Secretary may consult with*  
6           *providers of services and suppliers, organizations*  
7           *representing individuals entitled to benefits*  
8           *under part A or enrolled under part B, or both,*  
9           *and organizations and agencies performing func-*  
10          *tions necessary to carry out the purposes of this*  
11          *section with respect to such performance require-*  
12          *ments.*

13          “(C) *INCLUSION IN CONTRACTS.*—*All con-*  
14          *tractor performance requirements shall be set*  
15          *forth in the contract between the Secretary and*  
16          *the appropriate medicare administrative con-*  
17          *tractor. Such performance requirements—*

18                 “(i) *shall reflect the performance re-*  
19                 *quirements developed under subparagraph*  
20                 *(A), but may include additional perform-*  
21                 *ance requirements;*

22                 “(ii) *shall be used for evaluating con-*  
23                 *tractor performance under the contract; and*



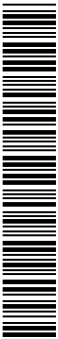
1                   “(iii) shall be consistent with the writ-  
2                   ten statement of work provided under the  
3                   contract.

4                   “(4) *INFORMATION REQUIREMENTS.*—The Sec-  
5                   retary shall not enter into a contract with a medicare  
6                   administrative contractor under this section unless  
7                   the contractor agrees—

8                   “(A) to furnish to the Secretary such timely  
9                   information and reports as the Secretary may  
10                  find necessary in performing his functions under  
11                  this title; and

12                  “(B) to maintain such records and afford  
13                  such access thereto as the Secretary finds nec-  
14                  essary to assure the correctness and verification  
15                  of the information and reports under subpara-  
16                  graph (A) and otherwise to carry out the pur-  
17                  poses of this title.

18                  “(5) *SURETY BOND.*—A contract with a medi-  
19                  care administrative contractor under this section may  
20                  require the medicare administrative contractor, and  
21                  any of its officers or employees certifying payments or  
22                  disbursing funds pursuant to the contract, or other-  
23                  wise participating in carrying out the contract, to  
24                  give surety bond to the United States in such amount  
25                  as the Secretary may deem appropriate.



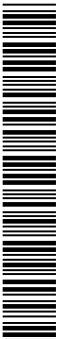
1       “(c) *TERMS AND CONDITIONS.*—

2               “(1) *IN GENERAL.*—A contract with any medi-  
3       *care administrative contractor under this section may*  
4       *contain such terms and conditions as the Secretary*  
5       *finds necessary or appropriate and may provide for*  
6       *advances of funds to the medicare administrative con-*  
7       *tractor for the making of payments by it under sub-*  
8       *section (a)(4)(B).*

9               “(2) *PROHIBITION ON MANDATES FOR CERTAIN*  
10       *DATA COLLECTION.*—The Secretary may not require,  
11       *as a condition of entering into, or renewing, a con-*  
12       *tract under this section, that the medicare adminis-*  
13       *trative contractor match data obtained other than in*  
14       *its activities under this title with data used in the ad-*  
15       *ministration of this title for purposes of identifying*  
16       *situations in which the provisions of section 1862(b)*  
17       *may apply.*

18       “(d) *LIMITATION ON LIABILITY OF MEDICARE ADMIN-*  
19       *ISTRATIVE CONTRACTORS AND CERTAIN OFFICERS.*—

20               “(1) *CERTIFYING OFFICER.*—No individual des-  
21       *ignated pursuant to a contract under this section as*  
22       *a certifying officer shall, in the absence of the reckless*  
23       *disregard of the individual’s obligations or the intent*  
24       *by that individual to defraud the United States, be*



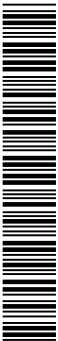
1        *liable with respect to any payments certified by the*  
2        *individual under this section.*

3            “(2) *DISBURSING OFFICER.*—*No disbursing offi-*  
4        *cer shall, in the absence of the reckless disregard of the*  
5        *officer’s obligations or the intent by that officer to de-*  
6        *fraud the United States, be liable with respect to any*  
7        *payment by such officer under this section if it was*  
8        *based upon an authorization (which meets the appli-*  
9        *cable requirements for such internal controls estab-*  
10       *lished by the Comptroller General) of a certifying offi-*  
11       *cer designated as provided in paragraph (1) of this*  
12       *subsection.*

13            “(3) *LIABILITY OF MEDICARE ADMINISTRATIVE*  
14        *CONTRACTOR.*—

15            “(A) *IN GENERAL.*—*No medicare administrative*  
16        *contractor shall be liable to the United States for a*  
17        *payment by a certifying or disbursing officer unless,*  
18        *in connection with such payment or in the super-*  
19        *vision of or selection of such officer, the medicare ad-*  
20        *ministrative contractor acted with reckless disregard*  
21        *of its obligations under its medicare administrative*  
22        *contract or with intent to defraud the United States.*

23            “(B) *RELATIONSHIP TO FALSE CLAIMS ACT.*—  
24        *Nothing in this subsection shall be construed to limit*  
25        *liability for conduct that would constitute a violation*

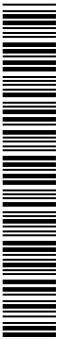


1       *of sections 3729 through 3731 of title 31, United*  
2       *States Code (commonly known as the ‘False Claims*  
3       *Act’).*

4               “(4) *INDEMNIFICATION BY SECRETARY.—*

5               “(A) *IN GENERAL.—Subject to subpara-*  
6       *graphs (B) and (D), in the case of a medicare*  
7       *administrative contractor (or a person who is a*  
8       *director, officer, or employee of such a contractor*  
9       *or who is engaged by the contractor to partici-*  
10       *pate directly in the claims administration proc-*  
11       *ess) who is made a party to any judicial or ad-*  
12       *ministrative proceeding arising from or relating*  
13       *directly to the claims administration process*  
14       *under this title, the Secretary may, to the extent*  
15       *the Secretary determines to be appropriate and*  
16       *as specified in the contract with the contractor,*  
17       *indemnify the contractor and such persons.*

18               “(B) *CONDITIONS.—The Secretary may not*  
19       *provide indemnification under subparagraph (A)*  
20       *insofar as the liability for such costs arises di-*  
21       *rectly from conduct that is determined by the ju-*  
22       *dicial proceeding or by the Secretary to be crimi-*  
23       *nal in nature, fraudulent, or grossly negligent. If*  
24       *indemnification is provided by the Secretary*  
25       *with respect to a contractor before a determina-*



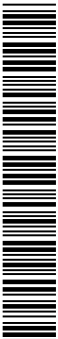
1           *tion that such costs arose directly from such con-*  
2           *duct, the contractor shall reimburse the Secretary*  
3           *for costs of indemnification.*

4           “(C) *SCOPE OF INDEMNIFICATION.*—*Indem-*  
5           *nification by the Secretary under subparagraph*  
6           *(A) may include payment of judgments, settle-*  
7           *ments (subject to subparagraph (D)), awards,*  
8           *and costs (including reasonable legal expenses).*

9           “(D) *WRITTEN APPROVAL FOR SETTLE-*  
10          *MENTS.*—*A contractor or other person described*  
11          *in subparagraph (A) may not propose to nego-*  
12          *tiate a settlement or compromise of a proceeding*  
13          *described in such subparagraph without the*  
14          *prior written approval of the Secretary to nego-*  
15          *tiate such settlement or compromise. Any indem-*  
16          *nification under subparagraph (A) with respect*  
17          *to amounts paid under a settlement or com-*  
18          *promise of a proceeding described in such sub-*  
19          *paragraph are conditioned upon prior written*  
20          *approval by the Secretary of the final settlement*  
21          *or compromise.*

22          “(E) *CONSTRUCTION.*—*Nothing in this*  
23          *paragraph shall be construed—*

24                 *“(i) to change any common law immu-*  
25                 *nity that may be available to a medicare*



1                   *administrative contractor or person de-*  
2                   *scribed in subparagraph (A); or*

3                   *“(ii) to permit the payment of costs*  
4                   *not otherwise allowable, reasonable, or allo-*  
5                   *cable under the Federal Acquisition Regula-*  
6                   *tions.”.*

7                   (2) *CONSIDERATION OF INCORPORATION OF CUR-*  
8                   *RENT LAW STANDARDS.—In developing contract per-*  
9                   *formance requirements under section 1874A(b) of the*  
10                  *Social Security Act, as inserted by paragraph (1), the*  
11                  *Secretary shall consider inclusion of the performance*  
12                  *standards described in sections 1816(f)(2) of such Act*  
13                  *(relating to timely processing of reconsiderations and*  
14                  *applications for exemptions) and section*  
15                  *1842(b)(2)(B) of such Act (relating to timely review*  
16                  *of determinations and fair hearing requests), as such*  
17                  *sections were in effect before the date of the enactment*  
18                  *of this Act.*

19                  (b) *CONFORMING AMENDMENTS TO SECTION 1816 (RE-*  
20                  *LATING TO FISCAL INTERMEDIARIES).—Section 1816 (42*  
21                  *U.S.C. 1395h) is amended as follows:*

22                         (1) *The heading is amended to read as follows:*  
23                         *“PROVISIONS RELATING TO THE ADMINISTRATION OF PART*  
24                                 *A”.*

25                         (2) *Subsection (a) is amended to read as follows:*



1       “(a) *The administration of this part shall be conducted*  
2 *through contracts with medicare administrative contractors*  
3 *under section 1874A.*”.

4           (3) *Subsection (b) is repealed.*

5           (4) *Subsection (c) is amended—*

6               (A) *by striking paragraph (1); and*

7               (B) *in each of paragraphs (2)(A) and*  
8 *(3)(A), by striking “agreement under this sec-*  
9 *tion” and inserting “contract under section*  
10 *1874A that provides for making payments under*  
11 *this part”.*

12          (5) *Subsections (d) through (i) are repealed.*

13          (6) *Subsections (j) and (k) are each amended—*

14               (A) *by striking “An agreement with an*  
15 *agency or organization under this section” and*  
16 *inserting “A contract with a medicare adminis-*  
17 *trative contractor under section 1874A with re-*  
18 *spect to the administration of this part”; and*

19               (B) *by striking “such agency or organiza-*  
20 *tion” and inserting “such medicare administra-*  
21 *tive contractor” each place it appears.*

22          (7) *Subsection (l) is repealed.*

23          (c) *CONFORMING AMENDMENTS TO SECTION 1842 (RE-*  
24 *LATING TO CARRIERS).—Section 1842 (42 U.S.C. 1395u)*  
25 *is amended as follows:*

1           (1) *The heading is amended to read as follows:*

2    “PROVISIONS RELATING TO THE ADMINISTRATION OF PART  
3                                    *B*”.

4           (2) *Subsection (a) is amended to read as follows:*

5       “(a) *The administration of this part shall be conducted*  
6 *through contracts with medicare administrative contractors*  
7 *under section 1874A.*”.

8           (3) *Subsection (b) is amended—*

9                (A) *by striking paragraph (1);*

10               (B) *in paragraph (2)—*

11                   (i) *by striking subparagraphs (A) and*  
12 *(B);*

13                   (ii) *in subparagraph (C), by striking*  
14 *“carriers” and inserting “medicare admin-*  
15 *istrative contractors”; and*

16                   (iii) *by striking subparagraphs (D)*  
17 *and (E);*

18               (C) *in paragraph (3)—*

19                   (i) *in the matter before subparagraph*  
20 *(A), by striking “Each such contract shall*  
21 *provide that the carrier” and inserting*  
22 *“The Secretary”;*

23                   (ii) *by striking “will” the first place it*  
24 *appears in each of subparagraphs (A), (B),*  
25 *(F), (G), (H), and (L) and inserting*  
26 *“shall”;*

1                   (iii) in subparagraph (B), in the mat-  
2                   ter before clause (i), by striking “to the pol-  
3                   icyholders and subscribers of the carrier”  
4                   and inserting “to the policyholders and sub-  
5                   scribers of the medicare administrative con-  
6                   tractor”;

7                   (iv) by striking subparagraphs (C),  
8                   (D), and (E);

9                   (v) in subparagraph (H)—

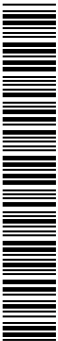
10                   (I) by striking “if it makes deter-  
11                   minations or payments with respect to  
12                   physicians’ services,” in the matter  
13                   preceding clause (i); and

14                   (II) by striking “carrier” and in-  
15                   serting “medicare administrative con-  
16                   tractor” in clause (i);

17                   (vi) by striking subparagraph (I);

18                   (vii) in subparagraph (L), by striking  
19                   the semicolon and inserting a period;

20                   (viii) in the first sentence, after sub-  
21                   paragraph (L), by striking “and shall con-  
22                   tain” and all that follows through the pe-  
23                   riod; and



1                   *(ix) in the seventh sentence, by insert-*  
2                   *ing “medicare administrative contractor,”*  
3                   *after “carrier,”; and*

4                   *(D) by striking paragraph (5);*

5                   *(E) in paragraph (6)(D)(iv), by striking*  
6                   *“carrier” and inserting “medicare administra-*  
7                   *tive contractor”; and*

8                   *(F) in paragraph (7), by striking “the car-*  
9                   *rier” and inserting “the Secretary” each place it*  
10                  *appears.*

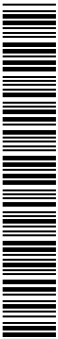
11                  *(4) Subsection (c) is amended—*

12                   *(A) by striking paragraph (1);*

13                   *(B) in paragraph (2)(A), by striking “con-*  
14                   *tract under this section which provides for the*  
15                   *disbursement of funds, as described in subsection*  
16                   *(a)(1)(B),” and inserting “contract under section*  
17                   *1874A that provides for making payments under*  
18                   *this part”;*

19                   *(C) in paragraph (3)(A), by striking “sub-*  
20                   *section (a)(1)(B)” and inserting “section*  
21                   *1874A(a)(3)(B)”;*

22                   *(D) in paragraph (4), in the matter pre-*  
23                   *ceding subparagraph (A), by striking “carrier”*  
24                   *and inserting “medicare administrative con-*  
25                   *tractor”; and*



1                   (E) by striking paragraphs (5) and (6).

2                   (5) Subsections (d), (e), and (f) are repealed.

3                   (6) Subsection (g) is amended by striking “car-  
4                   rier or carriers” and inserting “medicare administra-  
5                   tive contractor or contractors”.

6                   (7) Subsection (h) is amended—

7                   (A) in paragraph (2)—

8                   (i) by striking “Each carrier having  
9                   an agreement with the Secretary under sub-  
10                  section (a)” and inserting “The Secretary”;  
11                  and

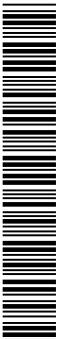
12                  (ii) by striking “Each such carrier”  
13                  and inserting “The Secretary”;

14                  (B) in paragraph (3)(A)—

15                  (i) by striking “a carrier having an  
16                  agreement with the Secretary under sub-  
17                  section (a)” and inserting “medicare ad-  
18                  ministrative contractor having a contract  
19                  under section 1874A that provides for mak-  
20                  ing payments under this part”; and

21                  (ii) by striking “such carrier” and in-  
22                  serting “such contractor”;

23                  (C) in paragraph (3)(B)—



1                   (i) by striking “a carrier” and insert-  
2                   ing “a medicare administrative contractor”  
3                   each place it appears; and

4                   (ii) by striking “the carrier” and in-  
5                   serting “the contractor” each place it ap-  
6                   pears; and

7                   (D) in paragraphs (5)(A) and (5)(B)(iii),  
8                   by striking “carriers” and inserting “medicare  
9                   administrative contractors” each place it ap-  
10                  pears.

11               (8) Subsection (l) is amended—

12                   (A) in paragraph (1)(A)(iii), by striking  
13                   “carrier” and inserting “medicare administra-  
14                   tive contractor”; and

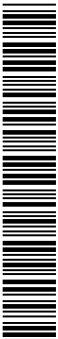
15                   (B) in paragraph (2), by striking “carrier”  
16                   and inserting “medicare administrative con-  
17                   tractor”.

18               (9) Subsection (p)(3)(A) is amended by striking  
19               “carrier” and inserting “medicare administrative  
20               contractor”.

21               (10) Subsection (q)(1)(A) is amended by striking  
22               “carrier”.

23               (d) *EFFECTIVE DATE; TRANSITION RULE.*—

24                   (1) *EFFECTIVE DATE.*—

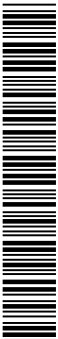


1           (A) *IN GENERAL.—Except as otherwise pro-*  
2           *vided in this subsection, the amendments made*  
3           *by this section shall take effect on October 1,*  
4           *2005, and the Secretary is authorized to take*  
5           *such steps before such date as may be necessary*  
6           *to implement such amendments on a timely*  
7           *basis.*

8           (B) *CONSTRUCTION FOR CURRENT CON-*  
9           *TRACTS.—Such amendments shall not apply to*  
10          *contracts in effect before the date specified under*  
11          *subparagraph (A) that continue to retain the*  
12          *terms and conditions in effect on such date (ex-*  
13          *cept as otherwise provided under this Act, other*  
14          *than under this section) until such date as the*  
15          *contract is let out for competitive bidding under*  
16          *such amendments.*

17          (C) *DEADLINE FOR COMPETITIVE BID-*  
18          *DING.—The Secretary shall provide for the let-*  
19          *ting by competitive bidding of all contracts for*  
20          *functions of medicare administrative contractors*  
21          *for annual contract periods that begin on or*  
22          *after October 1, 2010.*

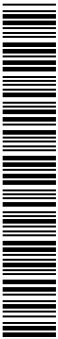
23          (D) *WAIVER OF PROVIDER NOMINATION*  
24          *PROVISIONS DURING TRANSITION.—During the*  
25          *period beginning on the date of the enactment of*



1           *this Act and before the date specified under sub-*  
2           *paragraph (A), the Secretary may enter into*  
3           *new agreements under section 1816 of the Social*  
4           *Security Act (42 U.S.C. 1395h) without regard*  
5           *to any of the provider nomination provisions of*  
6           *such section.*

7           (2) *GENERAL TRANSITION RULES.—The Sec-*  
8           *retary shall take such steps, consistent with para-*  
9           *graph (1)(B) and (1)(C), as are necessary to provide*  
10          *for an appropriate transition from contracts under*  
11          *section 1816 and section 1842 of the Social Security*  
12          *Act (42 U.S.C. 1395h, 1395u) to contracts under sec-*  
13          *tion 1874A, as added by subsection (a)(1).*

14          (3) *AUTHORIZING CONTINUATION OF MIP FUNC-*  
15          *TIONS UNDER CURRENT CONTRACTS AND AGREE-*  
16          *MENTS AND UNDER ROLLOVER CONTRACTS.—The pro-*  
17          *visions contained in the exception in section*  
18          *1893(d)(2) of the Social Security Act (42 U.S.C.*  
19          *1395ddd(d)(2)) shall continue to apply notwith-*  
20          *standing the amendments made by this section, and*  
21          *any reference in such provisions to an agreement or*  
22          *contract shall be deemed to include a contract under*  
23          *section 1874A of such Act, as inserted by subsection*  
24          *(a)(1), that continues the activities referred to in such*  
25          *provisions.*



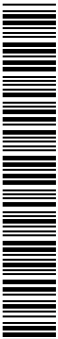


1       (e) *REFERENCES.*—On and after the effective date pro-  
2       vided under subsection (d)(1), any reference to a fiscal  
3       intermediary or carrier under title XI or XVIII of the So-  
4       cial Security Act (or any regulation, manual instruction,  
5       interpretative rule, statement of policy, or guideline issued  
6       to carry out such titles) shall be deemed a reference to an  
7       appropriate medicare administrative contractor (as pro-  
8       vided under section 1874A of the Social Security Act).

9       (f) *REPORTS ON IMPLEMENTATION.*—

10       (1) *PLAN FOR IMPLEMENTATION.*—By not later  
11       than October 1, 2004, the Secretary shall submit a re-  
12       port to Congress and the Comptroller General of the  
13       United States that describes the plan for implementa-  
14       tion of the amendments made by this section. The  
15       Comptroller General shall conduct an evaluation of  
16       such plan and shall submit to Congress, not later  
17       than 6 months after the date the report is received, a  
18       report on such evaluation and shall include in such  
19       report such recommendations as the Comptroller Gen-  
20       eral deems appropriate.

21       (2) *STATUS OF IMPLEMENTATION.*—The Sec-  
22       retary shall submit a report to Congress not later  
23       than October 1, 2008, that describes the status of im-  
24       plementation of such amendments and that includes  
25       a description of the following:



1           (A) *The number of contracts that have been*  
2           *competitively bid as of such date.*

3           (B) *The distribution of functions among*  
4           *contracts and contractors.*

5           (C) *A timeline for complete transition to*  
6           *full competition.*

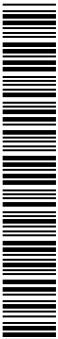
7           (D) *A detailed description of how the Sec-*  
8           *retary has modified oversight and management*  
9           *of medicare contractors to adapt to full competi-*  
10          *tion.*

11 **SEC. 202. REQUIREMENTS FOR INFORMATION SECURITY**  
12                   **FOR MEDICARE ADMINISTRATIVE CONTRAC-**  
13                   **TORS.**

14          (a) *IN GENERAL.*—Section 1874A, as added by section  
15          201(a)(1), is amended by adding at the end the following  
16          new subsection:

17          “(e) *REQUIREMENTS FOR INFORMATION SECURITY.*—

18               “(1) *DEVELOPMENT OF INFORMATION SECURITY*  
19          *PROGRAM.*—A medicare administrative contractor  
20          that performs the functions referred to in subpara-  
21          graphs (A) and (B) of subsection (a)(4) (relating to  
22          determining and making payments) shall implement  
23          a contractor-wide information security program to  
24          provide information security for the operation and  
25          assets of the contractor with respect to such functions



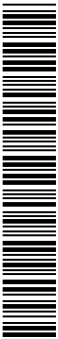
1       *under this title. An information security program*  
2       *under this paragraph shall meet the requirements for*  
3       *information security programs imposed on Federal*  
4       *agencies under paragraphs (1) through (8) of section*  
5       *3544(b) of title 44, United States Code (other than re-*  
6       *quirements under paragraphs (2)(D)(i), (5)(A), and*  
7       *(5)(B) of such section).*

8               “(2) *INDEPENDENT AUDITS.—*

9               “(A) *PERFORMANCE OF ANNUAL EVALUA-*  
10       *TIONS.—Each year a medicare administrative*  
11       *contractor that performs the functions referred to*  
12       *in subparagraphs (A) and (B) of subsection*  
13       *(a)(4) (relating to determining and making pay-*  
14       *ments) shall undergo an evaluation of the infor-*  
15       *mation security of the contractor with respect to*  
16       *such functions under this title. The evaluation*  
17       *shall—*

18               “(i) *be performed by an entity that*  
19       *meets such requirements for independence as*  
20       *the Inspector General of the Department of*  
21       *Health and Human Services may establish;*  
22       *and*

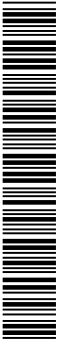
23               “(ii) *test the effectiveness of informa-*  
24       *tion security policies, procedures, and prac-*  
25       *tices of a representative subset of the con-*



1 *tractor's information systems (as defined in*  
2 *section 3502(8) of title 44, United States*  
3 *Code) relating to such functions under this*  
4 *title and an assessment of compliance with*  
5 *the requirements of this subsection and re-*  
6 *lated information security policies, proce-*  
7 *dures, standards and guidelines, including*  
8 *policies and procedures as may be pre-*  
9 *scribed by the Director of the Office of Man-*  
10 *agement and Budget and applicable infor-*  
11 *mation security standards promulgated*  
12 *under section 11331 of title 40, United*  
13 *States Code.*

14 *“(B) DEADLINE FOR INITIAL EVALUA-*  
15 *TION.—*

16 *“(i) NEW CONTRACTORS.—In the case*  
17 *of a medicare administrative contractor*  
18 *covered by this subsection that has not pre-*  
19 *viously performed the functions referred to*  
20 *in subparagraphs (A) and (B) of subsection*  
21 *(a)(4) (relating to determining and making*  
22 *payments) as a fiscal intermediary or car-*  
23 *rier under section 1816 or 1842, the first*  
24 *independent evaluation conducted pursuant*



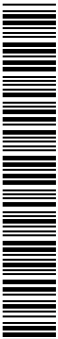
1            *subparagraph (A) shall be completed prior*  
2            *to commencing such functions.*

3            “(ii) *OTHER CONTRACTORS.—In the*  
4            *case of a medicare administrative con-*  
5            *tractor covered by this subsection that is not*  
6            *described in clause (i), the first independent*  
7            *evaluation conducted pursuant subpara-*  
8            *graph (A) shall be completed within 1 year*  
9            *after the date the contractor commences*  
10           *functions referred to in clause (i) under this*  
11           *section.*

12           “(C) *REPORTS ON EVALUATIONS.—*

13           “(i) *TO THE DEPARTMENT OF HEALTH*  
14           *AND HUMAN SERVICES.—The results of*  
15           *independent evaluations under subpara-*  
16           *graph (A) shall be submitted promptly to*  
17           *the Inspector General of the Department of*  
18           *Health and Human Services and to the Sec-*  
19           *retary.*

20           “(ii) *TO CONGRESS.—The Inspector*  
21           *General of Department of Health and*  
22           *Human Services shall submit to Congress*  
23           *annual reports on the results of such eval-*  
24           *uations, including assessments of the scope*  
25           *and sufficiency of such evaluations.*

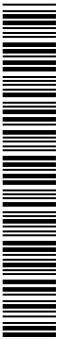


1                   “(iii) *AGENCY REPORTING.*—*The Sec-*  
2                   *retary shall address the results of such eval-*  
3                   *uations in reports required under section*  
4                   *3544(c) of title 44, United States Code.*”.

5           (b) *APPLICATION OF REQUIREMENTS TO FISCAL*  
6 *INTERMEDIARIES AND CARRIERS.*—

7           (1) *IN GENERAL.*—*The provisions of section*  
8           *1874A(e)(2) of the Social Security Act (other than*  
9           *subparagraph (B)), as added by subsection (a), shall*  
10           *apply to each fiscal intermediary under section 1816*  
11           *of the Social Security Act (42 U.S.C. 1395h) and*  
12           *each carrier under section 1842 of such Act (42*  
13           *U.S.C. 1395u) in the same manner as they apply to*  
14           *medicare administrative contractors under such pro-*  
15           *visions.*

16           (2) *DEADLINE FOR INITIAL EVALUATION.*—*In the*  
17           *case of such a fiscal intermediary or carrier with an*  
18           *agreement or contract under such respective section in*  
19           *effect as of the date of the enactment of this Act, the*  
20           *first evaluation under section 1874A(e)(2)(A) of the*  
21           *Social Security Act (as added by subsection (a)), pur-*  
22           *suant to paragraph (1), shall be completed (and a re-*  
23           *port on the evaluation submitted to the Secretary) by*  
24           *not later than 1 year after such date.*



1       ***TITLE III—EDUCATION AND***  
2                   ***OUTREACH***

3   ***SEC. 301. PROVIDER EDUCATION AND TECHNICAL ASSIST-***  
4                   ***ANCE.***

5       *(a) COORDINATION OF EDUCATION FUNDING.—*

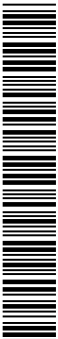
6               *(1) IN GENERAL.—The Social Security Act is*  
7               *amended by inserting after section 1888 the following*  
8               *new section:*

9               *“PROVIDER EDUCATION AND TECHNICAL ASSISTANCE*

10              *“SEC. 1889. (a) COORDINATION OF EDUCATION FUND-*  
11              *ING.—The Secretary shall coordinate the educational activi-*  
12              *ties provided through medicare contractors (as defined in*  
13              *subsection (g), including under section 1893) in order to*  
14              *maximize the effectiveness of Federal education efforts for*  
15              *providers of services and suppliers.”.*

16              *(2) EFFECTIVE DATE.—The amendment made by*  
17              *paragraph (1) shall take effect on the date of the en-*  
18              *actment of this Act.*

19              *(3) REPORT.—Not later than October 1, 2004,*  
20              *the Secretary shall submit to Congress a report that*  
21              *includes a description and evaluation of the steps*  
22              *taken to coordinate the funding of provider education*  
23              *under section 1889(a) of the Social Security Act, as*  
24              *added by paragraph (1).*



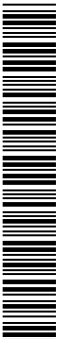
1       (b) *INCENTIVES TO IMPROVE CONTRACTOR PERFORM-*  
2 *ANCE.*—

3           (1) *IN GENERAL.*—Section 1874A, as added by  
4       section 201(a)(1) and as amended by section 202(a),  
5       is amended by adding at the end the following new  
6       subsection:

7       “(f) *INCENTIVES TO IMPROVE CONTRACTOR PERFORM-*  
8 *ANCE IN PROVIDER EDUCATION AND OUTREACH.*—The Sec-  
9       retary shall use specific claims payment error rates or simi-  
10      lar methodology of medicare administrative contractors in  
11      the processing or reviewing of medicare claims in order to  
12      give such contractors an incentive to implement effective  
13      education and outreach programs for providers of services  
14      and suppliers.”.

15           (2) *APPLICATION TO FISCAL INTERMEDIARIES*  
16 *AND CARRIERS.*—The provisions of section 1874A(f) of  
17      the Social Security Act, as added by paragraph (1),  
18      shall apply to each fiscal intermediary under section  
19      1816 of the Social Security Act (42 U.S.C. 1395h)  
20      and each carrier under section 1842 of such Act (42  
21      U.S.C. 1395u) in the same manner as they apply to  
22      medicare administrative contractors under such pro-  
23      visions.

24           (3) *GAO REPORT ON ADEQUACY OF METHOD-*  
25 *LOGY.*—Not later than October 1, 2004, the Comp-



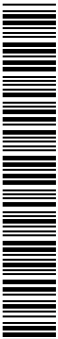


1        *troller General of the United States shall submit to*  
2        *Congress and to the Secretary a report on the ade-*  
3        *quacy of the methodology under section 1874A(f) of*  
4        *the Social Security Act, as added by paragraph (1),*  
5        *and shall include in the report such recommendations*  
6        *as the Comptroller General determines appropriate*  
7        *with respect to the methodology.*

8            *(4) REPORT ON USE OF METHODOLOGY IN AS-*  
9        *SESSING CONTRACTOR PERFORMANCE.—Not later*  
10       *than October 1, 2004, the Secretary shall submit to*  
11       *Congress a report that describes how the Secretary in-*  
12       *tends to use such methodology in assessing medicare*  
13       *contractor performance in implementing effective edu-*  
14       *cation and outreach programs, including whether to*  
15       *use such methodology as a basis for performance bo-*  
16       *nuses. The report shall include an analysis of the*  
17       *sources of identified errors and potential changes in*  
18       *systems of contractors and rules of the Secretary that*  
19       *could reduce claims error rates.*

20           *(c) PROVISION OF ACCESS TO AND PROMPT RE-*  
21       *SPONSES FROM MEDICARE ADMINISTRATIVE CONTRAC-*  
22       *TORS.—*

23           *(1) IN GENERAL.—Section 1874A, as added by*  
24       *section 201(a)(1) and as amended by section 202(a)*



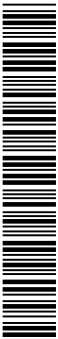
1        *and subsection (b), is further amended by adding at*  
2        *the end the following new subsection:*

3        *“(g) COMMUNICATIONS WITH BENEFICIARIES, PRO-*  
4        *VIDERS OF SERVICES AND SUPPLIERS.—*

5                *“(1) COMMUNICATION STRATEGY.—The Secretary*  
6        *shall develop a strategy for communications with in-*  
7        *dividuals entitled to benefits under part A or enrolled*  
8        *under part B, or both, and with providers of services*  
9        *and suppliers under this title.*

10              *“(2) RESPONSE TO WRITTEN INQUIRIES.—Each*  
11        *medicare administrative contractor shall, for those*  
12        *providers of services and suppliers which submit*  
13        *claims to the contractor for claims processing and for*  
14        *those individuals entitled to benefits under part A or*  
15        *enrolled under part B, or both, with respect to whom*  
16        *claims are submitted for claims processing, provide*  
17        *general written responses (which may be through elec-*  
18        *tronic transmission) in a clear, concise, and accurate*  
19        *manner to inquiries of providers of services, suppliers*  
20        *and individuals entitled to benefits under part A or*  
21        *enrolled under part B, or both, concerning the pro-*  
22        *grams under this title within 45 business days of the*  
23        *date of receipt of such inquiries.*

24              *“(3) RESPONSE TO TOLL-FREE LINES.—The Sec-*  
25        *retary shall ensure that each medicare administrative*



1        *contractor shall provide, for those providers of services*  
2        *and suppliers which submit claims to the contractor*  
3        *for claims processing and for those individuals enti-*  
4        *tled to benefits under part A or enrolled under part*  
5        *B, or both, with respect to whom claims are submitted*  
6        *for claims processing, a toll-free telephone number at*  
7        *which such individuals, providers of services and sup-*  
8        *pliers may obtain information regarding billing, cod-*  
9        *ing, claims, coverage, and other appropriate informa-*  
10       *tion under this title.*

11            “(4)    *MONITORING    OF    CONTRACTOR   RE-*  
12        *SPONSES.—*

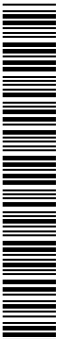
13            “(A) *IN GENERAL.—Each medicare admin-*  
14        *istrative contractor shall, consistent with stand-*  
15        *ards developed by the Secretary under subpara-*  
16        *graph (B)—*

17            “(i) *maintain a system for identifying*  
18        *who provides the information referred to in*  
19        *paragraphs (2) and (3); and*

20            “(ii) *monitor the accuracy, consist-*  
21        *ency, and timeliness of the information so*  
22        *provided.*

23            “(B) *DEVELOPMENT OF STANDARDS.—*

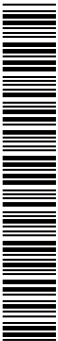
24            “(i) *IN GENERAL.—The Secretary shall*  
25        *establish and make public standards to*



1           *monitor the accuracy, consistency, and*  
2           *timeliness of the information provided in*  
3           *response to written and telephone inquiries*  
4           *under this subsection. Such standards shall*  
5           *be consistent with the performance require-*  
6           *ments established under subsection (b)(3).*

7           “(ii) *EVALUATION.*—*In conducting*  
8           *evaluations of individual medicare admin-*  
9           *istrative contractors, the Secretary shall*  
10          *take into account the results of the moni-*  
11          *toring conducted under subparagraph (A)*  
12          *taking into account as performance require-*  
13          *ments the standards established under*  
14          *clause (i). The Secretary shall, in consulta-*  
15          *tion with organizations representing pro-*  
16          *viders of services, suppliers, and individuals*  
17          *entitled to benefits under part A or enrolled*  
18          *under part B, or both, establish standards*  
19          *relating to the accuracy, consistency, and*  
20          *timeliness of the information so provided.*

21          “(C) *DIRECT MONITORING.*—*Nothing in this*  
22          *paragraph shall be construed as preventing the*  
23          *Secretary from directly monitoring the accuracy,*  
24          *consistency, and timeliness of the information so*  
25          *provided.”.*



1           (2) *EFFECTIVE DATE.*—*The amendment made by*  
2           *paragraph (1) shall take effect October 1, 2004.*

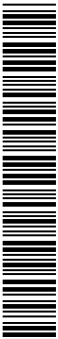
3           (3) *APPLICATION TO FISCAL INTERMEDIARIES*  
4           *AND CARRIERS.*—*The provisions of section 1874A(g)*  
5           *of the Social Security Act, as added by paragraph*  
6           *(1), shall apply to each fiscal intermediary under sec-*  
7           *tion 1816 of the Social Security Act (42 U.S.C.*  
8           *1395h) and each carrier under section 1842 of such*  
9           *Act (42 U.S.C. 1395u) in the same manner as they*  
10          *apply to medicare administrative contractors under*  
11          *such provisions.*

12          (d) *IMPROVED PROVIDER EDUCATION AND TRAIN-*  
13          *ING.*—

14               (1) *IN GENERAL.*—*Section 1889, as added by*  
15               *subsection (a), is amended by adding at the end the*  
16               *following new subsections:*

17               “(b) *ENHANCED EDUCATION AND TRAINING.*—

18                       (1) *ADDITIONAL RESOURCES.*—*There are au-*  
19                       *thorized to be appropriated to the Secretary (in ap-*  
20                       *propriate part from the Federal Hospital Insurance*  
21                       *Trust Fund and the Federal Supplementary Medical*  
22                       *Insurance Trust Fund) \$25,000,000 for each of fiscal*  
23                       *years 2005 and 2006 and such sums as may be nec-*  
24                       *essary for succeeding fiscal years.*



1           “(2) *USE.*—*The funds made available under*  
2           *paragraph (1) shall be used to increase the conduct by*  
3           *medicare contractors of education and training of*  
4           *providers of services and suppliers regarding billing,*  
5           *coding, and other appropriate items and may also be*  
6           *used to improve the accuracy, consistency, and timeli-*  
7           *ness of contractor responses.*

8           “(c) *TAILORING EDUCATION AND TRAINING ACTIVI-*  
9           *TIES FOR SMALL PROVIDERS OR SUPPLIERS.*—

10           “(1) *IN GENERAL.*—*Insofar as a medicare con-*  
11           *tractor conducts education and training activities, it*  
12           *shall tailor such activities to meet the special needs*  
13           *of small providers of services or suppliers (as defined*  
14           *in paragraph (2)).*

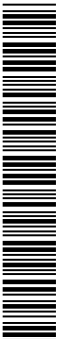
15           “(2) *SMALL PROVIDER OF SERVICES OR SUP-*  
16           *PLIER.*—*In this subsection, the term ‘small provider*  
17           *of services or supplier’ means—*

18                   “(A) *a provider of services with fewer than*  
19                   *25 full-time-equivalent employees; or*

20                   “(B) *a supplier with fewer than 10 full-*  
21                   *time-equivalent employees.”.*

22           “(2) *EFFECTIVE DATE.*—*The amendment made by*  
23           *paragraph (1) shall take effect on October 1, 2004.*

24           “(e) *REQUIREMENT TO MAINTAIN INTERNET SITES.*—



1           (1) *IN GENERAL.*—Section 1889, as added by  
2           subsection (a) and as amended by subsection (d), is  
3           further amended by adding at the end the following  
4           new subsection:

5           “(d) *INTERNET SITES; FAQs.*—The Secretary, and  
6           each medicare contractor insofar as it provides services (in-  
7           cluding claims processing) for providers of services or sup-  
8           pliers, shall maintain an Internet site which—

9           “(1) provides answers in an easily accessible for-  
10          mat to frequently asked questions, and

11          “(2) includes other published materials of the  
12          contractor,

13          that relate to providers of services and suppliers under the  
14          programs under this title (and title XI insofar as it relates  
15          to such programs).”.

16          (2) *EFFECTIVE DATE.*—The amendment made by  
17          paragraph (1) shall take effect on October 1, 2004.

18          (f) *ADDITIONAL PROVIDER EDUCATION PROVISIONS.*—

19          (1) *IN GENERAL.*—Section 1889, as added by  
20          subsection (a) and as amended by subsections (d) and  
21          (e), is further amended by adding at the end the fol-  
22          lowing new subsections:

23          “(e) *ENCOURAGEMENT OF PARTICIPATION IN EDU-*  
24          *CATION PROGRAM ACTIVITIES.*—A medicare contractor  
25          may not use a record of attendance at (or failure to attend)

1 *educational activities or other information gathered during*  
2 *an educational program conducted under this section or*  
3 *otherwise by the Secretary to select or track providers of*  
4 *services or suppliers for the purpose of conducting any type*  
5 *of audit or prepayment review.*

6 “(f) *CONSTRUCTION.*—*Nothing in this section or sec-*  
7 *tion 1893(g) shall be construed as providing for disclosure*  
8 *by a medicare contractor of information that would com-*  
9 *promise pending law enforcement activities or reveal find-*  
10 *ings of law enforcement-related audits.*

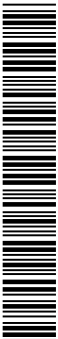
11 “(g) *DEFINITIONS.*—*For purposes of this section, the*  
12 *term ‘medicare contractor’ includes the following:*

13 “(1) *A medicare administrative contractor with*  
14 *a contract under section 1874A, including a fiscal*  
15 *intermediary with a contract under section 1816 and*  
16 *a carrier with a contract under section 1842.*

17 “(2) *An eligible entity with a contract under sec-*  
18 *tion 1893.*

19 *Such term does not include, with respect to activities of a*  
20 *specific provider of services or supplier an entity that has*  
21 *no authority under this title or title IX with respect to such*  
22 *activities and such provider of services or supplier.”.*

23 (2) *EFFECTIVE DATE.*—*The amendment made by*  
24 *paragraph (1) shall take effect on the date of the en-*  
25 *actment of this Act.*





1 **SEC. 302. SMALL PROVIDER TECHNICAL ASSISTANCE DEM-**  
2 **ONSTRATION PROGRAM.**

3 (a) *ESTABLISHMENT.*—

4 (1) *IN GENERAL.*—*The Secretary shall establish*  
5 *a demonstration program (in this section referred to*  
6 *as the “demonstration program”) under which tech-*  
7 *nical assistance described in paragraph (2) is made*  
8 *available, upon request and on a voluntary basis, to*  
9 *small providers of services or suppliers in order to*  
10 *improve compliance with the applicable requirements*  
11 *of the programs under medicare program under title*  
12 *XVIII of the Social Security Act (including provi-*  
13 *sions of title XI of such Act insofar as they relate to*  
14 *such title and are not administered by the Office of*  
15 *the Inspector General of the Department of Health*  
16 *and Human Services).*

17 (2) *FORMS OF TECHNICAL ASSISTANCE.*—*The*  
18 *technical assistance described in this paragraph is—*

19 (A) *evaluation and recommendations re-*  
20 *garding billing and related systems; and*

21 (B) *information and assistance regarding*  
22 *policies and procedures under the medicare pro-*  
23 *gram, including coding and reimbursement.*

24 (3) *SMALL PROVIDERS OF SERVICES OR SUP-*  
25 *PLIERS.*—*In this section, the term “small providers of*  
26 *services or suppliers” means—*

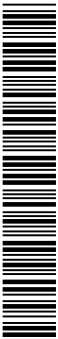
1                   (A) a provider of services with fewer than  
2                   25 full-time-equivalent employees; or

3                   (B) a supplier with fewer than 10 full-time-  
4                   equivalent employees.

5           (b) *QUALIFICATION OF CONTRACTORS.*—In conducting  
6 the demonstration program, the Secretary shall enter into  
7 contracts with qualified organizations (such as peer review  
8 organizations or entities described in section 1889(g)(2) of  
9 the Social Security Act, as inserted by section 5(f)(1)) with  
10 appropriate expertise with billing systems of the full range  
11 of providers of services and suppliers to provide the tech-  
12 nical assistance. In awarding such contracts, the Secretary  
13 shall consider any prior investigations of the entity's work  
14 by the Inspector General of Department of Health and  
15 Human Services or the Comptroller General of the United  
16 States.

17           (c) *DESCRIPTION OF TECHNICAL ASSISTANCE.*—The  
18 technical assistance provided under the demonstration pro-  
19 gram shall include a direct and in-person examination of  
20 billing systems and internal controls of small providers of  
21 services or suppliers to determine program compliance and  
22 to suggest more efficient or effective means of achieving such  
23 compliance.

24           (d) *AVOIDANCE OF RECOVERY ACTIONS FOR PROB-*  
25 *LEMS IDENTIFIED AS CORRECTED.*—The Secretary shall



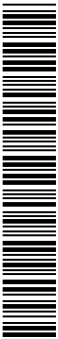
1 *provide that, absent evidence of fraud and notwithstanding*  
2 *any other provision of law, any errors found in a compli-*  
3 *ance review for a small provider of services or supplier that*  
4 *participates in the demonstration program shall not be sub-*  
5 *ject to recovery action if the technical assistance personnel*  
6 *under the program determine that—*

7           *(1) the problem that is the subject of the compli-*  
8           *ance review has been corrected to their satisfaction*  
9           *within 30 days of the date of the visit by such per-*  
10          *sonnel to the small provider of services or supplier;*  
11          *and*

12          *(2) such problem remains corrected for such pe-*  
13          *riod as is appropriate.*

14 *The previous sentence applies only to claims filed as part*  
15 *of the demonstration program and lasts only for the dura-*  
16 *tion of such program and only as long as the small provider*  
17 *of services or supplier is a participant in such program.*

18          *(e) GAO EVALUATION.—Not later than 2 years after*  
19 *the date of the date the demonstration program is first im-*  
20 *plemented, the Comptroller General, in consultation with*  
21 *the Inspector General of the Department of Health and*  
22 *Human Services, shall conduct an evaluation of the dem-*  
23 *onstration program. The evaluation shall include a deter-*  
24 *mination of whether claims error rates are reduced for*  
25 *small providers of services or suppliers who participated*



1 *in the program and the extent of improper payments made*  
2 *as a result of the demonstration program. The Comptroller*  
3 *General shall submit a report to the Secretary and the Con-*  
4 *gress on such evaluation and shall include in such report*  
5 *recommendations regarding the continuation or extension*  
6 *of the demonstration program.*

7       (f) *FINANCIAL PARTICIPATION BY PROVIDERS.—The*  
8 *provision of technical assistance to a small provider of serv-*  
9 *ices or supplier under the demonstration program is condi-*  
10 *tioned upon the small provider of services or supplier pay-*  
11 *ing an amount estimated (and disclosed in advance of a*  
12 *provider's or supplier's participation in the program) to*  
13 *be equal to 25 percent of the cost of the technical assistance.*

14       (g) *AUTHORIZATION OF APPROPRIATIONS.—There are*  
15 *authorized to be appropriated to the Secretary (in appro-*  
16 *priate part from the Federal Hospital Insurance Trust*  
17 *Fund and the Federal Supplementary Medical Insurance*  
18 *Trust Fund) to carry out the demonstration program—*

19               (1) *for fiscal year 2005, \$1,000,000, and*

20               (2) *for fiscal year 2006, \$6,000,000.*

21 **SEC. 303. MEDICARE PROVIDER OMBUDSMAN; MEDICARE**  
22 **BENEFICIARY OMBUDSMAN.**

23       (a) *MEDICARE PROVIDER OMBUDSMAN.—Section 1868*  
24 *(42 U.S.C. 1395ee) is amended—*



1           (1) *by adding at the end of the heading the fol-*  
2           *lowing: “; MEDICARE PROVIDER OMBUDSMAN”;*

3           (2) *by inserting “PRACTICING PHYSICIANS ADVI-*  
4           *SORY COUNCIL.—(1)” after “(a)”;*

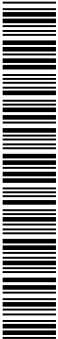
5           (3) *in paragraph (1), as so redesignated under*  
6           *paragraph (2), by striking “in this section” and in-*  
7           *serting “in this subsection”;*

8           (4) *by redesignating subsections (b) and (c) as*  
9           *paragraphs (2) and (3), respectively; and*

10          (5) *by adding at the end the following new sub-*  
11          *section:*

12          “(b) *MEDICARE PROVIDER OMBUDSMAN.—The Sec-*  
13          *retary shall appoint within the Department of Health and*  
14          *Human Services a Medicare Provider Ombudsman. The*  
15          *Ombudsman shall—*

16                “(1) *provide assistance, on a confidential basis,*  
17                *to providers of services and suppliers with respect to*  
18                *complaints, grievances, and requests for information*  
19                *concerning the programs under this title (including*  
20                *provisions of title XI insofar as they relate to this*  
21                *title and are not administered by the Office of the In-*  
22                *spector General of the Department of Health and*  
23                *Human Services) and in the resolution of unclear or*  
24                *conflicting guidance given by the Secretary and medi-*  
25                *care contractors to such providers of services and sup-*



1       pliers regarding such programs and provisions and  
2       requirements under this title and such provisions;  
3       and

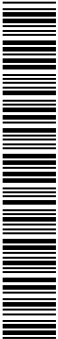
4               “(2) submit recommendations to the Secretary  
5       for improvement in the administration of this title  
6       and such provisions, including—

7               “(A) recommendations to respond to recur-  
8       ring patterns of confusion in this title and such  
9       provisions (including recommendations regard-  
10      ing suspending imposition of sanctions where  
11      there is widespread confusion in program ad-  
12      ministration), and

13              “(B) recommendations to provide for an ap-  
14      propriate and consistent response (including not  
15      providing for audits) in cases of self-identified  
16      overpayments by providers of services and sup-  
17      pliers.

18   *The Ombudsman shall not serve as an advocate for any in-*  
19   *creases in payments or new coverage of services, but may*  
20   *identify issues and problems in payment or coverage poli-*  
21   *cies.”.*

22       (b) *MEDICARE BENEFICIARY OMBUDSMAN.*—*Title*  
23   *XVIII is amended by inserting after section 1806 the fol-*  
24   *lowing new section:*



1                   “*MEDICARE BENEFICIARY OMBUDSMAN*

2           “*SEC. 1807. (a) IN GENERAL.—The Secretary shall*  
3 *appoint within the Department of Health and Human*  
4 *Services a Medicare Beneficiary Ombudsman who shall*  
5 *have expertise and experience in the fields of health care*  
6 *and education of (and assistance to) individuals entitled*  
7 *to benefits under this title.*

8           “*(b) DUTIES.—The Medicare Beneficiary Ombudsman*  
9 *shall—*

10                   “*(1) receive complaints, grievances, and requests*  
11 *for information submitted by individuals entitled to*  
12 *benefits under part A or enrolled under part B, or*  
13 *both, with respect to any aspect of the medicare pro-*  
14 *gram;*

15                   “*(2) provide assistance with respect to com-*  
16 *plaints, grievances, and requests referred to in para-*  
17 *graph (1), including—*

18                           “*(A) assistance in collecting relevant infor-*  
19 *mation for such individuals, to seek an appeal of*  
20 *a decision or determination made by a fiscal*  
21 *intermediary, carrier, Medicare+Choice organi-*  
22 *zation, or the Secretary; and*

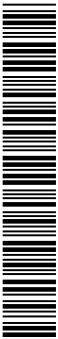
23                           “*(B) assistance to such individuals with*  
24 *any problems arising from disenrollment from a*  
25 *Medicare+Choice plan under part C; and*

1           “(3) submit annual reports to Congress and the  
2           Secretary that describe the activities of the Office and  
3           that include such recommendations for improvement  
4           in the administration of this title as the Ombudsman  
5           determines appropriate.

6           *The Ombudsman shall not serve as an advocate for any in-*  
7           *creases in payments or new coverage of services, but may*  
8           *identify issues and problems in payment or coverage poli-*  
9           *cies.*

10          “(c) *WORKING WITH HEALTH INSURANCE COUN-*  
11          *SELING PROGRAMS.—To the extent possible, the Ombuds-*  
12          *man shall work with health insurance counseling programs*  
13          *(receiving funding under section 4360 of Omnibus Budget*  
14          *Reconciliation Act of 1990) to facilitate the provision of in-*  
15          *formation to individuals entitled to benefits under part A*  
16          *or enrolled under part B, or both regarding*  
17          *Medicare+Choice plans and changes to those plans. Noth-*  
18          *ing in this subsection shall preclude further collaboration*  
19          *between the Ombudsman and such programs.”.*

20          “(c) *DEADLINE FOR APPOINTMENT.—The Secretary*  
21          *shall appoint the Medicare Provider Ombudsman and the*  
22          *Medicare Beneficiary Ombudsman, under the amendments*  
23          *made by subsections (a) and (b), respectively, by not later*  
24          *than 1 year after the date of the enactment of this Act.*





1       (d) *FUNDING.*—*There are authorized to be appro-*  
2 *priated to the Secretary (in appropriate part from the Fed-*  
3 *eral Hospital Insurance Trust Fund and the Federal Sup-*  
4 *plementary Medical Insurance Trust Fund) to carry out*  
5 *the provisions of subsection (b) of section 1868 of the Social*  
6 *Security Act (relating to the Medicare Provider Ombuds-*  
7 *man), as added by subsection (a)(5) and section 1807 of*  
8 *such Act (relating to the Medicare Beneficiary Ombuds-*  
9 *man), as added by subsection (b), such sums as are nec-*  
10 *essary for fiscal year 2004 and each succeeding fiscal year.*

11       (e) *USE OF CENTRAL, TOLL-FREE NUMBER (1-800-*  
12 *MEDICARE).*—

13               (1) *PHONE TRIAGE SYSTEM; LISTING IN MEDI-*  
14 *CARE HANDBOOK INSTEAD OF OTHER TOLL-FREE*  
15 *NUMBERS.*—*Section 1804(b) (42 U.S.C. 1395b-2(b))*  
16 *is amended by adding at the end the following: “The*  
17 *Secretary shall provide, through the toll-free number*  
18 *1-800-MEDICARE, for a means by which individ-*  
19 *uals seeking information about, or assistance with,*  
20 *such programs who phone such toll-free number are*  
21 *transferred (without charge) to appropriate entities*  
22 *for the provision of such information or assistance.*  
23 *Such toll-free number shall be the toll-free number*  
24 *listed for general information and assistance in the*



1       *annual notice under subsection (a) instead of the list-*  
2       *ing of numbers of individual contractors.”.*

3           (2) *MONITORING ACCURACY.*—

4               (A) *STUDY.*—*The Comptroller General of*  
5       *the United States shall conduct a study to mon-*  
6       *itor the accuracy and consistency of information*  
7       *provided to individuals entitled to benefits under*  
8       *part A or enrolled under part B, or both,*  
9       *through the toll-free number 1–800–MEDICARE,*  
10       *including an assessment of whether the informa-*  
11       *tion provided is sufficient to answer questions of*  
12       *such individuals. In conducting the study, the*  
13       *Comptroller General shall examine the education*  
14       *and training of the individuals providing infor-*  
15       *mation through such number.*

16               (B) *REPORT.*—*Not later than 1 year after*  
17       *the date of the enactment of this Act, the Comp-*  
18       *troller General shall submit to Congress a report*  
19       *on the study conducted under subparagraph (A).*

20   **SEC. 304. BENEFICIARY OUTREACH DEMONSTRATION PRO-**  
21       **GRAM.**

22               (a) *IN GENERAL.*—*The Secretary shall establish a*  
23       *demonstration program (in this section referred to as the*  
24       *“demonstration program”) under which medicare special-*  
25       *ists employed by the Department of Health and Human*

1 *Services provide advice and assistance to individuals enti-*  
2 *tled to benefits under part A of title XVIII of the Social*  
3 *Security Act, or enrolled under part B of such title, or both,*  
4 *regarding the medicare program at the location of existing*  
5 *local offices of the Social Security Administration.*

6 (b) *LOCATIONS.—*

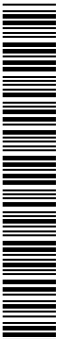
7 (1) *IN GENERAL.—The demonstration program*  
8 *shall be conducted in at least 6 offices or areas. Sub-*  
9 *ject to paragraph (2), in selecting such offices and*  
10 *areas, the Secretary shall provide preference for offices*  
11 *with a high volume of visits by individuals referred*  
12 *to in subsection (a).*

13 (2) *ASSISTANCE FOR RURAL BENEFICIARIES.—*  
14 *The Secretary shall provide for the selection of at*  
15 *least 2 rural areas to participate in the demonstra-*  
16 *tion program. In conducting the demonstration pro-*  
17 *gram in such rural areas, the Secretary shall provide*  
18 *for medicare specialists to travel among local offices*  
19 *in a rural area on a scheduled basis.*

20 (c) *DURATION.—The demonstration program shall be*  
21 *conducted over a 3-year period.*

22 (d) *EVALUATION AND REPORT.—*

23 (1) *EVALUATION.—The Secretary shall provide*  
24 *for an evaluation of the demonstration program. Such*  
25 *evaluation shall include an analysis of—*



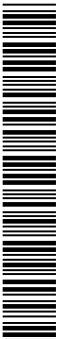
1           (A) utilization of, and satisfaction of those  
2           individuals referred to in subsection (a) with, the  
3           assistance provided under the program; and

4           (B) the cost-effectiveness of providing bene-  
5           ficiary assistance through out-stationing medi-  
6           care specialists at local offices of the Social Secu-  
7           rity Administration.

8           (2) *REPORT.*—The Secretary shall submit to  
9           Congress a report on such evaluation and shall in-  
10          clude in such report recommendations regarding the  
11          feasibility of permanently out-stationing medicare  
12          specialists at local offices of the Social Security Ad-  
13          ministration.

14   **SEC. 305. INCLUSION OF ADDITIONAL INFORMATION IN NO-**  
15                   **TICES TO BENEFICIARIES ABOUT SKILLED**  
16                   **NURSING FACILITY BENEFITS.**

17          (a) *IN GENERAL.*—The Secretary shall provide that in  
18          medicare beneficiary notices provided (under section  
19          1806(a) of the Social Security Act, 42 U.S.C. 1395b–7(a))  
20          with respect to the provision of post-hospital extended care  
21          services under part A of title XVIII of the Social Security  
22          Act, there shall be included information on the number of  
23          days of coverage of such services remaining under such part  
24          for the medicare beneficiary and spell of illness involved.



1       (b) *EFFECTIVE DATE.*—Subsection (a) shall apply to  
2   *notices provided during calendar quarters beginning more*  
3   *than 6 months after the date of the enactment of this Act.*

4   **SEC. 306. INFORMATION ON MEDICARE-CERTIFIED SKILLED**  
5                   **NURSING FACILITIES IN HOSPITAL DIS-**  
6                   **CHARGE PLANS.**

7       (a) *AVAILABILITY OF DATA.*—The Secretary shall pub-  
8   *licly provide information that enables hospital discharge*  
9   *planners, medicare beneficiaries, and the public to identify*  
10   *skilled nursing facilities that are participating in the medi-*  
11   *care program.*

12       (b) *INCLUSION OF INFORMATION IN CERTAIN HOS-*  
13   *PITAL DISCHARGE PLANS.*—

14               (1) *IN GENERAL.*—Section 1861(ee)(2)(D) (42  
15   *U.S.C. 1395x(ee)(2)(D)) is amended—*

16                   (A) *by striking “hospice services” and in-*  
17                   *serting “hospice care and post-hospital extended*  
18                   *care services”; and*

19                   (B) *by inserting before the period at the end*  
20                   *the following: “and, in the case of individuals*  
21                   *who are likely to need post-hospital extended care*  
22                   *services, the availability of such services through*  
23                   *facilities that participate in the program under*  
24                   *this title and that serve the area in which the*  
25                   *patient resides”.*

1           (2) *EFFECTIVE DATE.*—*The amendments made*  
2           *by paragraph (1) shall apply to discharge plans made*  
3           *on or after such date as the Secretary shall specify,*  
4           *but not later than 6 months after the date the Sec-*  
5           *retary provides for availability of information under*  
6           *subsection (a).*

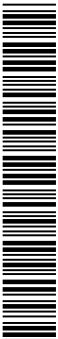
7                           ***TITLE IV—APPEALS AND***  
8                           ***RECOVERY***

9   ***SEC. 401. TRANSFER OF RESPONSIBILITY FOR MEDICARE***  
10                   ***APPEALS.***

11           (a) *TRANSITION PLAN.*—

12                   (1) *IN GENERAL.*—*Not later than October 1,*  
13           *2004, the Commissioner of Social Security and the*  
14           *Secretary shall develop and transmit to Congress and*  
15           *the Comptroller General of the United States a plan*  
16           *under which the functions of administrative law*  
17           *judges responsible for hearing cases under title XVIII*  
18           *of the Social Security Act (and related provisions in*  
19           *title XI of such Act) are transferred from the responsi-*  
20           *bility of the Commissioner and the Social Security*  
21           *Administration to the Secretary and the Department*  
22           *of Health and Human Services.*

23                   (2) *GAO EVALUATION.*—*The Comptroller Gen-*  
24           *eral of the United States shall evaluate the plan and,*  
25           *not later than the date that is 6 months after the date*



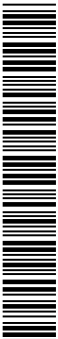
1        *on which the plan is received by the Comptroller Gen-*  
2        *eral, shall submit to Congress a report on such eval-*  
3        *uation.*

4        *(b) TRANSFER OF ADJUDICATION AUTHORITY.—*

5            *(1) IN GENERAL.—Not earlier than July 1, 2005,*  
6        *and not later than October 1, 2005, the Commissioner*  
7        *of Social Security and the Secretary shall implement*  
8        *the transition plan under subsection (a) and transfer*  
9        *the administrative law judge functions described in*  
10       *such subsection from the Social Security Administra-*  
11       *tion to the Secretary.*

12           *(2) ASSURING INDEPENDENCE OF JUDGES.—The*  
13        *Secretary shall assure the independence of adminis-*  
14        *trative law judges performing the administrative law*  
15        *judge functions transferred under paragraph (1) from*  
16        *the Centers for Medicare & Medicaid Services and its*  
17        *contractors. In order to assure such independence, the*  
18        *Secretary shall place such judges in an administra-*  
19        *tive office that is organizationally and functionally*  
20        *separate from such Centers.*

21           *(3) GEOGRAPHIC DISTRIBUTION.—The Secretary*  
22        *shall provide for an appropriate geographic distribu-*  
23        *tion of administrative law judges performing the ad-*  
24        *ministrative law judge functions transferred under*

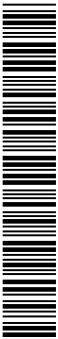


1       *paragraph (1) throughout the United States to ensure*  
2       *timely access to such judges.*

3           (4) *HIRING AUTHORITY.*—*Subject to the amounts*  
4       *provided in advance in appropriations Act, the Sec-*  
5       *retary shall have authority to hire administrative law*  
6       *judges to hear such cases, giving priority to those*  
7       *judges with prior experience in handling medicare*  
8       *appeals and in a manner consistent with paragraph*  
9       *(3), and to hire support staff for such judges.*

10          (5) *FINANCING.*—*Amounts payable under law to*  
11       *the Commissioner for administrative law judges per-*  
12       *forming the administrative law judge functions trans-*  
13       *ferred under paragraph (1) from the Federal Hospital*  
14       *Insurance Trust Fund and the Federal Supple-*  
15       *mentary Medical Insurance Trust Fund shall become*  
16       *payable to the Secretary for the functions so trans-*  
17       *ferred.*

18          (6) *SHARED RESOURCES.*—*The Secretary shall*  
19       *enter into such arrangements with the Commissioner*  
20       *as may be appropriate with respect to transferred*  
21       *functions of administrative law judges to share office*  
22       *space, support staff, and other resources, with appro-*  
23       *priate reimbursement from the Trust Funds described*  
24       *in paragraph (5).*





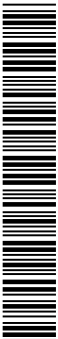
1       (c) *INCREASED FINANCIAL SUPPORT.*—*In addition to*  
2 *any amounts otherwise appropriated, to ensure timely ac-*  
3 *tion on appeals before administrative law judges and the*  
4 *Departmental Appeals Board consistent with section 1869*  
5 *of the Social Security Act (as amended by section 521 of*  
6 *BIPA, 114 Stat. 2763A–534), there are authorized to be ap-*  
7 *propriated (in appropriate part from the Federal Hospital*  
8 *Insurance Trust Fund and the Federal Supplementary*  
9 *Medical Insurance Trust Fund) to the Secretary such sums*  
10 *as are necessary for fiscal year 2005 and each subsequent*  
11 *fiscal year to—*

12           (1) *increase the number of administrative law*  
13 *judges (and their staffs) under subsection (b)(4);*

14           (2) *improve education and training opportuni-*  
15 *ties for administrative law judges (and their staffs);*  
16 *and*

17           (3) *increase the staff of the Departmental Ap-*  
18 *peals Board.*

19       (d)       *CONFORMING        AMENDMENT.*—*Section*  
20 *1869(f)(2)(A)(i) (42 U.S.C. 1395ff(f)(2)(A)(i)), as added by*  
21 *section 522(a) of BIPA (114 Stat. 2763A–543), is amended*  
22 *by striking “of the Social Security Administration”.*



1 **SEC. 402. PROCESS FOR EXPEDITED ACCESS TO REVIEW.**

2 (a) *EXPEDITED ACCESS TO JUDICIAL REVIEW.*—*Sec-*  
3 *tion 1869(b) (42 U.S.C. 1395ff(b)) as amended by BIPA,*  
4 *is amended—*

5 (1) *in paragraph (1)(A), by inserting “, subject*  
6 *to paragraph (2),” before “to judicial review of the*  
7 *Secretary’s final decision”;*

8 (2) *in paragraph (1)(F)—*

9 (A) *by striking clause (ii);*

10 (B) *by striking “PROCEEDING” and all that*  
11 *follows through “DETERMINATION” and inserting*  
12 *“DETERMINATIONS AND RECONSIDERATIONS”;*  
13 *and*

14 (C) *by redesignating subclauses (I) and (II)*  
15 *as clauses (i) and (ii) and by moving the inden-*  
16 *tation of such subclauses (and the matter that*  
17 *follows) 2 ems to the left; and*

18 (3) *by adding at the end the following new para-*  
19 *graph:*

20 “(2) *EXPEDITED ACCESS TO JUDICIAL RE-*  
21 *VIEW.*—

22 “(A) *IN GENERAL.*—*The Secretary shall es-*  
23 *tablish a process under which a provider of serv-*  
24 *ices or supplier that furnishes an item or service*  
25 *or an individual entitled to benefits under part*  
26 *A or enrolled under part B, or both, who has*

1       *filed an appeal under paragraph (1) may obtain*  
2       *access to judicial review when a review panel*  
3       *(described in subparagraph (D)), on its own mo-*  
4       *tion or at the request of the appellant, deter-*  
5       *mines that no entity in the administrative ap-*  
6       *peals process has the authority to decide the*  
7       *question of law or regulation relevant to the mat-*  
8       *ters in controversy and that there is no material*  
9       *issue of fact in dispute. The appellant may make*  
10       *such request only once with respect to a question*  
11       *of law or regulation in a case of an appeal.*

12               “(B) *PROMPT DETERMINATIONS.—If, after*  
13       *or coincident with appropriately filing a request*  
14       *for an administrative hearing, the appellant re-*  
15       *quests a determination by the appropriate review*  
16       *panel that no review panel has the authority to*  
17       *decide the question of law or regulations relevant*  
18       *to the matters in controversy and that there is*  
19       *no material issue of fact in dispute and if such*  
20       *request is accompanied by the documents and*  
21       *materials as the appropriate review panel shall*  
22       *require for purposes of making such determina-*  
23       *tion, such review panel shall make a determina-*  
24       *tion on the request in writing within 60 days*  
25       *after the date such review panel receives the re-*

1           *quest and such accompanying documents and*  
2           *materials. Such a determination by such review*  
3           *panel shall be considered a final decision and*  
4           *not subject to review by the Secretary.*

5           “(C) *ACCESS TO JUDICIAL REVIEW.*—

6           “(i) *IN GENERAL.*—*If the appropriate*  
7           *review panel—*

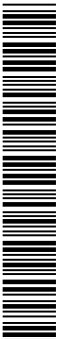
8                   “(I) *determines that there are no*  
9                   *material issues of fact in dispute and*  
10                  *that the only issue is one of law or reg-*  
11                  *ulation that no review panel has the*  
12                  *authority to decide; or*

13                  “(II) *fails to make such deter-*  
14                  *mination within the period provided*  
15                  *under subparagraph (B);*  
16           *then the appellant may bring a civil action*  
17           *as described in this subparagraph.*

18           “(ii) *DEADLINE FOR FILING.*—*Such*  
19           *action shall be filed, in the case described*  
20           *in—*

21                   “(I) *clause (i)(I), within 60 days*  
22                   *of date of the determination described*  
23                   *in such subparagraph; or*

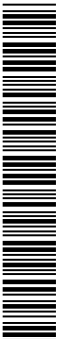
24                   “(II) *clause (i)(II), within 60*  
25                   *days of the end of the period provided*



1                   under subparagraph (B) for the deter-  
2                   mination.

3                   “(iii) *VENUE*.—Such action shall be  
4                   brought in the district court of the United  
5                   States for the judicial district in which the  
6                   appellant is located (or, in the case of an  
7                   action brought jointly by more than one ap-  
8                   plicant, the judicial district in which the  
9                   greatest number of applicants are located)  
10                  or in the district court for the District of  
11                  Columbia.

12                  “(iv) *INTEREST ON AMOUNTS IN CON-*  
13                  *TROVERSY*.—Where a provider of services or  
14                  supplier seeks judicial review pursuant to  
15                  this paragraph, the amount in controversy  
16                  shall be subject to annual interest beginning  
17                  on the first day of the first month beginning  
18                  after the 60-day period as determined pur-  
19                  suant to clause (ii) and equal to the rate of  
20                  interest on obligations issued for purchase  
21                  by the Federal Hospital Insurance Trust  
22                  Fund and by the Federal Supplementary  
23                  Medical Insurance Trust Fund for the  
24                  month in which the civil action authorized  
25                  under this paragraph is commenced, to be



1           *awarded by the reviewing court in favor of*  
2           *the prevailing party. No interest awarded*  
3           *pursuant to the preceding sentence shall be*  
4           *deemed income or cost for the purposes of*  
5           *determining reimbursement due providers of*  
6           *services or suppliers under this Act.*

7           “(D) *REVIEW PANELS.*—*For purposes of*  
8           *this subsection, a ‘review panel’ is a panel con-*  
9           *sisting of 3 members (who shall be administra-*  
10          *tive law judges, members of the Departmental*  
11          *Appeals Board, or qualified individuals associ-*  
12          *ated with a qualified independent contractor (as*  
13          *defined in subsection (c)(2)) or with another*  
14          *independent entity) designated by the Secretary*  
15          *for purposes of making determinations under*  
16          *this paragraph.”.*

17          (b) *APPLICATION TO PROVIDER AGREEMENT DETER-*  
18          *MINATIONS.*—*Section 1866(h)(1) (42 U.S.C. 1395cc(h)(1))*  
19          *is amended—*

20                 (1) *by inserting “(A)” after “(h)(1)”;* and

21                 (2) *by adding at the end the following new sub-*  
22          *paragraph:*

23                 “(B) *An institution or agency described in subpara-*  
24          *graph (A) that has filed for a hearing under subparagraph*  
25          *(A) shall have expedited access to judicial review under this*

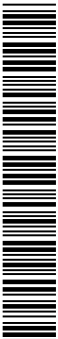
1 *subparagraph in the same manner as providers of services,*  
2 *suppliers, and individuals entitled to benefits under part*  
3 *A or enrolled under part B, or both, may obtain expedited*  
4 *access to judicial review under the process established under*  
5 *section 1869(b)(2). Nothing in this subparagraph shall be*  
6 *construed to affect the application of any remedy imposed*  
7 *under section 1819 during the pendency of an appeal under*  
8 *this subparagraph.”.*

9       (c) *EFFECTIVE DATE.*—*The amendments made by this*  
10 *section shall apply to appeals filed on or after October 1,*  
11 *2004.*

12       (d) *EXPEDITED REVIEW OF CERTAIN PROVIDER*  
13 *AGREEMENT DETERMINATIONS.*—

14               (1) *TERMINATION AND CERTAIN OTHER IMME-*  
15 *DIATE REMEDIES.*—*The Secretary shall develop and*  
16 *implement a process to expedite proceedings under*  
17 *sections 1866(h) of the Social Security Act (42 U.S.C.*  
18 *1395cc(h)) in which the remedy of termination of*  
19 *participation, or a remedy described in clause (i) or*  
20 *(iii) of section 1819(h)(2)(B) of such Act (42 U.S.C.*  
21 *1395i–3(h)(2)(B)) which is applied on an immediate*  
22 *basis, has been imposed. Under such process priority*  
23 *shall be provided in cases of termination.*

24               (2) *INCREASED FINANCIAL SUPPORT.*—*In addi-*  
25 *tion to any amounts otherwise appropriated, to re-*



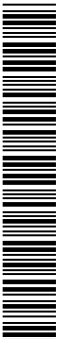
1       duce by 50 percent the average time for administra-  
2       tive determinations on appeals under section 1866(h)  
3       of the Social Security Act (42 U.S.C. 1395cc(h)),  
4       there are authorized to be appropriated (in appro-  
5       priate part from the Federal Hospital Insurance  
6       Trust Fund and the Federal Supplementary Medical  
7       Insurance Trust Fund) to the Secretary such addi-  
8       tional sums for fiscal year 2005 and each subsequent  
9       fiscal year as may be necessary. The purposes for  
10      which such amounts are available include increasing  
11      the number of administrative law judges (and their  
12      staffs) and the appellate level staff at the Depart-  
13      mental Appeals Board of the Department of Health  
14      and Human Services and educating such judges and  
15      staffs on long-term care issues.

16   **SEC. 403. REVISIONS TO MEDICARE APPEALS PROCESS.**

17       (a) *REQUIRING FULL AND EARLY PRESENTATION OF*  
18   *EVIDENCE.—*

19           (1) *IN GENERAL.—*Section 1869(b) (42 U.S.C.  
20   1395ff(b)), as amended by BIPA and as amended by  
21   section 402(a), is further amended by adding at the  
22   end the following new paragraph:

23           “(3) *REQUIRING FULL AND EARLY PRESEN-*  
24   *TATION OF EVIDENCE BY PROVIDERS.—*A provider of  
25   services or supplier may not introduce evidence in





1        *any appeal under this section that was not presented*  
2        *at the reconsideration conducted by the qualified*  
3        *independent contractor under subsection (c), unless*  
4        *there is good cause which precluded the introduction*  
5        *of such evidence at or before that reconsideration.”.*

6            (2) *EFFECTIVE DATE.*—*The amendment made by*  
7        *paragraph (1) shall take effect on October 1, 2004.*

8            (b) *USE OF PATIENTS’ MEDICAL RECORDS.*—*Section*  
9        *1869(c)(3)(B)(i) (42 U.S.C. 1395ff(c)(3)(B)(i)), as amended*  
10       *by BIPA, is amended by inserting “(including the medical*  
11       *records of the individual involved)” after “clinical experi-*  
12       *ence”.*

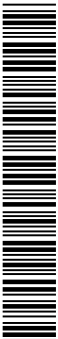
13           (c) *NOTICE REQUIREMENTS FOR MEDICARE AP-*  
14       *PEALS.*—

15           (1) *INITIAL DETERMINATIONS AND REDETER-*  
16       *MINATIONS.*—*Section 1869(a) (42 U.S.C. 1395ff(a)),*  
17       *as amended by BIPA, is amended by adding at the*  
18       *end the following new paragraphs:*

19           “(4) *REQUIREMENTS OF NOTICE OF DETERMINA-*  
20       *TIONS.*—*With respect to an initial determination in-*  
21       *sofar as it results in a denial of a claim for benefits—*

22           “(A) *the written notice on the determina-*  
23       *tion shall include—*

24           “(i) *the reasons for the determination,*  
25       *including whether a local medical review*



1           *policy or a local coverage determination*  
2           *was used;*

3           “(ii) *the procedures for obtaining addi-*  
4           *tional information concerning the deter-*  
5           *mination, including the information de-*  
6           *scribed in subparagraph (B); and*

7           “(iii) *notification of the right to seek a*  
8           *redetermination or otherwise appeal the de-*  
9           *termination and instructions on how to ini-*  
10          *tiate such a redetermination under this sec-*  
11          *tion; and*

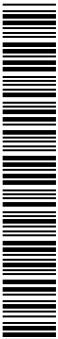
12          “(B) *the person provided such notice may*  
13          *obtain, upon request, the specific provision of the*  
14          *policy, manual, or regulation used in making*  
15          *the determination.*

16          “(5) *REQUIREMENTS OF NOTICE OF REDETER-*  
17          *MINATIONS.—With respect to a redetermination inso-*  
18          *far as it results in a denial of a claim for benefits—*

19               “(A) *the written notice on the redetermina-*  
20               *tion shall include—*

21                   “(i) *the specific reasons for the redeter-*  
22                   *mination;*

23                   “(ii) *as appropriate, a summary of the*  
24                   *clinical or scientific evidence used in mak-*  
25                   *ing the redetermination;*



1                   “(iii) a description of the procedures  
2                   for obtaining additional information con-  
3                   cerning the redetermination; and

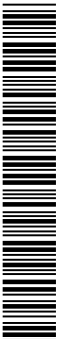
4                   “(iv) notification of the right to appeal  
5                   the redetermination and instructions on  
6                   how to initiate such an appeal under this  
7                   section;

8                   “(B) such written notice shall be provided  
9                   in printed form and written in a manner cal-  
10                  culated to be understood by the individual enti-  
11                  tled to benefits under part A or enrolled under  
12                  part B, or both; and

13                  “(C) the person provided such notice may  
14                  obtain, upon request, information on the specific  
15                  provision of the policy, manual, or regulation  
16                  used in making the redetermination.”.

17                  (2) RECONSIDERATIONS.—Section 1869(c)(3)(E)  
18                  (42 U.S.C. 1395ff(c)(3)(E)), as amended by BIPA, is  
19                  amended—

20                  (A) by inserting “be written in a manner  
21                  calculated to be understood by the individual en-  
22                  titled to benefits under part A or enrolled under  
23                  part B, or both, and shall include (to the extent  
24                  appropriate)” after “in writing, ”; and



1           (B) by inserting “and a notification of the  
2           right to appeal such determination and instruc-  
3           tions on how to initiate such appeal under this  
4           section” after “such decision,”.

5           (3) *APPEALS*.—Section 1869(d) (42 U.S.C.  
6           1395ff(d)), as amended by BIPA, is amended—

7           (A) in the heading, by inserting “; NOTICE”  
8           after “SECRETARY”; and

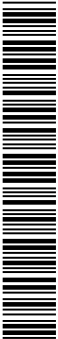
9           (B) by adding at the end the following new  
10          paragraph:

11          “(4) *NOTICE*.—Notice of the decision of an ad-  
12          ministrative law judge shall be in writing in a man-  
13          ner calculated to be understood by the individual en-  
14          titled to benefits under part A or enrolled under part  
15          B, or both, and shall include—

16               “(A) the specific reasons for the determina-  
17               tion (including, to the extent appropriate, a  
18               summary of the clinical or scientific evidence  
19               used in making the determination);

20               “(B) the procedures for obtaining addi-  
21               tional information concerning the decision; and

22               “(C) notification of the right to appeal the  
23               decision and instructions on how to initiate such  
24               an appeal under this section.”.



1           (4) *SUBMISSION OF RECORD FOR APPEAL.*—*Sec-*  
2           *tion 1869(c)(3)(J)(i) (42 U.S.C. 1395ff(c)(3)(J)(i)) by*  
3           *striking “prepare” and inserting “submit” and by*  
4           *striking “with respect to” and all that follows through*  
5           *“and relevant policies”.*

6           (d) *QUALIFIED INDEPENDENT CONTRACTORS.*—

7           (1) *ELIGIBILITY REQUIREMENTS OF QUALIFIED*  
8           *INDEPENDENT CONTRACTORS.*—*Section 1869(c)(3) (42*  
9           *U.S.C. 1395ff(c)(3)), as amended by BIPA, is*  
10          *amended—*

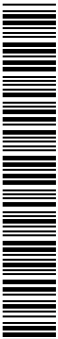
11                 (A) *in subparagraph (A), by striking “suffi-*  
12                 *cient training and expertise in medical science*  
13                 *and legal matters” and inserting “sufficient*  
14                 *medical, legal, and other expertise (including*  
15                 *knowledge of the program under this title) and*  
16                 *sufficient staffing”;* and

17                 (B) *by adding at the end the following new*  
18                 *subparagraph:*

19                 “(K) *INDEPENDENCE REQUIREMENTS.*—

20                         “(i) *IN GENERAL.*—*Subject to clause*  
21                         *(ii), a qualified independent contractor*  
22                         *shall not conduct any activities in a case*  
23                         *unless the entity—*

24                                 “(I) *is not a related party (as de-*  
25                                 *fined in subsection (g)(5));*



1                   “(II) does not have a material fa-  
2                   milial, financial, or professional rela-  
3                   tionship with such a party in relation  
4                   to such case; and

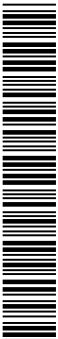
5                   “(III) does not otherwise have a  
6                   conflict of interest with such a party.

7                   “(ii) EXCEPTION FOR REASONABLE  
8                   COMPENSATION.—Nothing in clause (i) shall  
9                   be construed to prohibit receipt by a quali-  
10                  fied independent contractor of compensation  
11                  from the Secretary for the conduct of activi-  
12                  ties under this section if the compensation  
13                  is provided consistent with clause (iii).

14                  “(iii) LIMITATIONS ON ENTITY COM-  
15                  PENSATION.—Compensation provided by the  
16                  Secretary to a qualified independent con-  
17                  tractor in connection with reviews under  
18                  this section shall not be contingent on any  
19                  decision rendered by the contractor or by  
20                  any reviewing professional.”.

21                  (2) ELIGIBILITY REQUIREMENTS FOR REVIEW-  
22                  ERS.—Section 1869 (42 U.S.C. 1395ff), as amended  
23                  by BIPA, is amended—

24                         (A) by amending subsection (c)(3)(D) to  
25                         read as follows:



1                   “(D) *QUALIFICATIONS FOR REVIEWERS.*—

2                   *The requirements of subsection (g) shall be met*  
3                   *(relating to qualifications of reviewing profes-*  
4                   *sionals).”; and*

5                   *(B) by adding at the end the following new*  
6                   *subsection:*

7                   “(g) *QUALIFICATIONS OF REVIEWERS.*—

8                   “(1) *IN GENERAL.*—*In reviewing determinations*  
9                   *under this section, a qualified independent contractor*  
10                  *shall assure that—*

11                  “(A) *each individual conducting a review*  
12                  *shall meet the qualifications of paragraph (2);*

13                  “(B) *compensation provided by the con-*  
14                  *tractor to each such reviewer is consistent with*  
15                  *paragraph (3); and*

16                  “(C) *in the case of a review by a panel de-*  
17                  *scribed in subsection (c)(3)(B) composed of phy-*  
18                  *sicians or other health care professionals (each in*  
19                  *this subsection referred to as a ‘reviewing profes-*  
20                  *sional’), a reviewing professional meets the*  
21                  *qualifications described in paragraph (4) and,*  
22                  *where a claim is regarding the furnishing of*  
23                  *treatment by a physician (allopathic or osteo-*  
24                  *pathic) or the provision of items or services by*  
25                  *a physician (allopathic or osteopathic), a review-*

1           *ing professional shall be a physician (allopathic*  
2           *or osteopathic).*

3           “(2) *INDEPENDENCE.*—

4                 “(A) *IN GENERAL.*—Subject to subpara-  
5           *graph (B), each individual conducting a review*  
6           *in a case shall—*

7                     “(i) *not be a related party (as defined*  
8                     *in paragraph (5));*

9                     “(ii) *not have a material familial, fi-*  
10           *nancial, or professional relationship with*  
11           *such a party in the case under review; and*

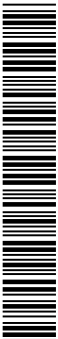
12                     “(iii) *not otherwise have a conflict of*  
13           *interest with such a party.*

14                 “(B) *EXCEPTION.*—Nothing in subpara-  
15           *graph (A) shall be construed to—*

16                     “(i) *prohibit an individual, solely on*  
17           *the basis of a participation agreement with*  
18           *a fiscal intermediary, carrier, or other con-*  
19           *tractor, from serving as a reviewing profes-*  
20           *sional if—*

21                     “(I) *the individual is not involved*  
22           *in the provision of items or services in*  
23           *the case under review;*

24                     “(II) *the fact of such an agree-*  
25           *ment is disclosed to the Secretary and*





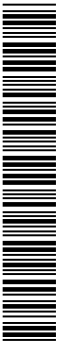
1           *the individual entitled to benefits*  
2           *under part A or enrolled under part B,*  
3           *or both, (or authorized representative)*  
4           *and neither party objects; and*

5                   “(III) *the individual is not an*  
6                   *employee of the intermediary, carrier,*  
7                   *or contractor and does not provide*  
8                   *services exclusively or primarily to or*  
9                   *on behalf of such intermediary, carrier,*  
10                  *or contractor;*

11                  “(ii) *prohibit an individual who has*  
12                  *staff privileges at the institution where the*  
13                  *treatment involved takes place from serving*  
14                  *as a reviewer merely on the basis of having*  
15                  *such staff privileges if the existence of such*  
16                  *privileges is disclosed to the Secretary and*  
17                  *such individual (or authorized representa-*  
18                  *tive), and neither party objects; or*

19                  “(iii) *prohibit receipt of compensation*  
20                  *by a reviewing professional from a con-*  
21                  *tractor if the compensation is provided con-*  
22                  *sistent with paragraph (3).*

23                  *For purposes of this paragraph, the term ‘par-*  
24                  *ticipation agreement’ means an agreement relat-*  
25                  *ing to the provision of health care services by the*



1           *individual and does not include the provision of*  
2           *services as a reviewer under this subsection.*

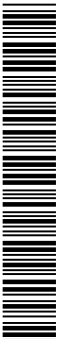
3           “(3) *LIMITATIONS ON REVIEWER COMPENSA-*  
4           *TION.—Compensation provided by a qualified inde-*  
5           *pendent contractor to a reviewer in connection with*  
6           *a review under this section shall not be contingent on*  
7           *the decision rendered by the reviewer.*

8           “(4) *LICENSURE AND EXPERTISE.—Each review-*  
9           *ing professional shall be—*

10           “(A) *a physician (allopathic or osteopathic)*  
11           *who is appropriately credentialed or licensed in*  
12           *one or more States to deliver health care services*  
13           *and has medical expertise in the field of practice*  
14           *that is appropriate for the items or services at*  
15           *issue; or*

16           “(B) *a health care professional who is le-*  
17           *gally authorized in one or more States (in ac-*  
18           *cordance with State law or the State regulatory*  
19           *mechanism provided by State law) to furnish the*  
20           *health care items or services at issue and has*  
21           *medical expertise in the field of practice that is*  
22           *appropriate for such items or services.*

23           “(5) *RELATED PARTY DEFINED.—For purposes*  
24           *of this section, the term ‘related party’ means, with*  
25           *respect to a case under this title involving a specific*



1       *individual entitled to benefits under part A or en-*  
2       *rolled under part B, or both, any of the following:*

3               “(A) *The Secretary, the medicare adminis-*  
4               *trative contractor involved, or any fiduciary, of-*  
5               *ficer, director, or employee of the Department of*  
6               *Health and Human Services, or of such con-*  
7               *tractor.*

8               “(B) *The individual (or authorized rep-*  
9               *resentative).*

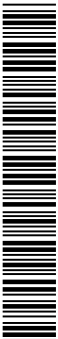
10              “(C) *The health care professional that pro-*  
11              *vides the items or services involved in the case.*

12              “(D) *The institution at which the items or*  
13              *services (or treatment) involved in the case are*  
14              *provided.*

15              “(E) *The manufacturer of any drug or*  
16              *other item that is included in the items or serv-*  
17              *ices involved in the case.*

18              “(F) *Any other party determined under any*  
19              *regulations to have a substantial interest in the*  
20              *case involved.”.*

21              (3) *REDUCING MINIMUM NUMBER OF QUALIFIED*  
22              *INDEPENDENT CONTRACTORS.—Section 1869(c)(4) (42*  
23              *U.S.C. 1395ff(c)(4)) is amended by striking “not*  
24              *fewer than 12 qualified independent contractors under*  
25              *this subsection” and inserting “with a sufficient num-*



1        *ber of qualified independent contractors (but not*  
2        *fewer than 4 such contractors) to conduct reconsider-*  
3        *ations consistent with the timeframes applicable*  
4        *under this subsection”.*

5            (4) *EFFECTIVE DATE.*—*The amendments made*  
6        *by paragraphs (1) and (2) shall be effective as if in-*  
7        *cluded in the enactment of the respective provisions of*  
8        *subtitle C of title V of BIPA, (114 Stat. 2763A–534).*

9            (5) *TRANSITION.*—*In applying section 1869(g) of*  
10        *the Social Security Act (as added by paragraph (2)),*  
11        *any reference to a medicare administrative contractor*  
12        *shall be deemed to include a reference to a fiscal*  
13        *intermediary under section 1816 of the Social Secu-*  
14        *urity Act (42 U.S.C. 1395h) and a carrier under sec-*  
15        *tion 1842 of such Act (42 U.S.C. 1395u).*

16    **SEC. 404. PREPAYMENT REVIEW.**

17        (a) *IN GENERAL.*—*Section 1874A, as added by section*  
18        *201(a)(1) and as amended by sections 202(b), 301(b)(1),*  
19        *and 301(c)(1), is further amended by adding at the end the*  
20        *following new subsection:*

21            “(h) *CONDUCT OF PREPAYMENT REVIEW.*—

22            “(1) *CONDUCT OF RANDOM PREPAYMENT RE-*  
23        *VIEW.*—

24            “(A) *IN GENERAL.*—*A medicare adminis-*  
25        *trative contractor may conduct random prepay-*

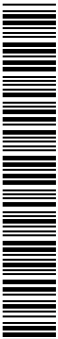
1           *ment review only to develop a contractor-wide or*  
2           *program-wide claims payment error rates or*  
3           *under such additional circumstances as may be*  
4           *provided under regulations, developed in con-*  
5           *sultation with providers of services and sup-*  
6           *pliers.*

7           “(B) *USE OF STANDARD PROTOCOLS WHEN*  
8           *CONDUCTING PREPAYMENT REVIEWS.*—*When a*  
9           *medicare administrative contractor conducts a*  
10          *random prepayment review, the contractor may*  
11          *conduct such review only in accordance with a*  
12          *standard protocol for random prepayment audits*  
13          *developed by the Secretary.*

14          “(C) *CONSTRUCTION.*—*Nothing in this*  
15          *paragraph shall be construed as preventing the*  
16          *denial of payments for claims actually reviewed*  
17          *under a random prepayment review.*

18          “(D) *RANDOM PREPAYMENT REVIEW.*—*For*  
19          *purposes of this subsection, the term ‘random*  
20          *prepayment review’ means a demand for the*  
21          *production of records or documentation absent*  
22          *cause with respect to a claim.*

23          “(2) *LIMITATIONS ON NON-RANDOM PREPAYMENT*  
24          *REVIEW.*—



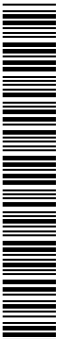
1                   “(A) *LIMITATIONS ON INITIATION OF NON-*  
2                   *RANDOM PREPAYMENT REVIEW.*—*A medicare ad-*  
3                   *ministrative contractor may not initiate non-*  
4                   *random prepayment review of a provider of serv-*  
5                   *ices or supplier based on the initial identifica-*  
6                   *tion by that provider of services or supplier of*  
7                   *an improper billing practice unless there is a*  
8                   *likelihood of sustained or high level of payment*  
9                   *error (as defined in subsection (i)(3)(A)).*

10                   “(B) *TERMINATION OF NON-RANDOM PRE-*  
11                   *PAYMENT REVIEW.*—*The Secretary shall issue*  
12                   *regulations relating to the termination, includ-*  
13                   *ing termination dates, of non-random prepay-*  
14                   *ment review. Such regulations may vary such a*  
15                   *termination date based upon the differences in*  
16                   *the circumstances triggering prepayment re-*  
17                   *view.”.*

18                   (b) *EFFECTIVE DATE.*—

19                   (1) *IN GENERAL.*—*Except as provided in this*  
20                   *subsection, the amendment made by subsection (a)*  
21                   *shall take effect 1 year after the date of the enactment*  
22                   *of this Act.*

23                   (2) *DEADLINE FOR PROMULGATION OF CERTAIN*  
24                   *REGULATIONS.*—*The Secretary shall first issue regula-*  
25                   *tions under section 1874A(h) of the Social Security*



1       *Act, as added by subsection (a), by not later than 1*  
2       *year after the date of the enactment of this Act.*

3               (3) *APPLICATION OF STANDARD PROTOCOLS FOR*  
4       *RANDOM           PREPAYMENT           REVIEW.—Section*  
5       *1874A(h)(1)(B) of the Social Security Act, as added*  
6       *by subsection (a), shall apply to random prepayment*  
7       *reviews conducted on or after such date (not later*  
8       *than 1 year after the date of the enactment of this*  
9       *Act) as the Secretary shall specify.*

10       (c) *APPLICATION TO FISCAL INTERMEDIARIES AND*  
11       *CARRIERS.—The provisions of section 1874A(h) of the So-*  
12       *cial Security Act, as added by subsection (a), shall apply*  
13       *to each fiscal intermediary under section 1816 of the Social*  
14       *Security Act (42 U.S.C. 1395h) and each carrier under sec-*  
15       *tion 1842 of such Act (42 U.S.C. 1395u) in the same man-*  
16       *ner as they apply to medicare administrative contractors*  
17       *under such provisions.*

18       **SEC. 405. RECOVERY OF OVERPAYMENTS.**

19       (a) *IN GENERAL.—Section 1893 (42 U.S.C. 1395ddd)*  
20       *is amended by adding at the end the following new sub-*  
21       *section:*

22               “(f) *RECOVERY OF OVERPAYMENTS.—*

23                       “(1) *USE OF REPAYMENT PLANS.—*

24                               “(A) *IN GENERAL.—If the repayment, with-*  
25                               *in 30 days by a provider of services or supplier,*

1           *of an overpayment under this title would con-*  
2           *stitute a hardship (as defined in subparagraph*  
3           *(B)), subject to subparagraph (C), upon request*  
4           *of the provider of services or supplier the Sec-*  
5           *retary shall enter into a plan with the provider*  
6           *of services or supplier for the repayment*  
7           *(through offset or otherwise) of such overpayment*  
8           *over a period of at least 6 months but not longer*  
9           *than 3 years (or not longer than 5 years in the*  
10           *case of extreme hardship, as determined by the*  
11           *Secretary). Interest shall accrue on the balance*  
12           *through the period of repayment. Such plan shall*  
13           *meet terms and conditions determined to be ap-*  
14           *propriate by the Secretary.*

15           “(B) *HARDSHIP.*—

16                   “(i) *IN GENERAL.*—For purposes of  
17                   subparagraph (A), the repayment of an  
18                   overpayment (or overpayments) within 30  
19                   days is deemed to constitute a hardship if—

20                           “(I) *in the case of a provider of*  
21                           *services that files cost reports, the ag-*  
22                           *gregate amount of the overpayments*  
23                           *exceeds 10 percent of the amount paid*  
24                           *under this title to the provider of serv-*  
25                           *ices for the cost reporting period cov-*

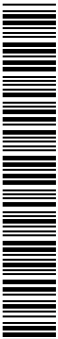


1                    *ered by the most recently submitted*  
2                    *cost report; or*

3                    *“(II) in the case of another pro-*  
4                    *vider of services or supplier, the aggre-*  
5                    *gate amount of the overpayments ex-*  
6                    *ceeds 10 percent of the amount paid*  
7                    *under this title to the provider of serv-*  
8                    *ices or supplier for the previous cal-*  
9                    *endar year.*

10                  *“(ii) RULE OF APPLICATION.—The*  
11                  *Secretary shall establish rules for the appli-*  
12                  *cation of this subparagraph in the case of a*  
13                  *provider of services or supplier that was not*  
14                  *paid under this title during the previous*  
15                  *year or was paid under this title only dur-*  
16                  *ing a portion of that year.*

17                  *“(iii) TREATMENT OF PREVIOUS OVER-*  
18                  *PAYMENTS.—If a provider of services or*  
19                  *supplier has entered into a repayment plan*  
20                  *under subparagraph (A) with respect to a*  
21                  *specific overpayment amount, such payment*  
22                  *amount under the repayment plan shall not*  
23                  *be taken into account under clause (i) with*  
24                  *respect to subsequent overpayment amounts.*



1                   “(C) *EXCEPTIONS.—Subparagraph (A)*  
2                   *shall not apply if—*

3                   “(i) *the Secretary has reason to suspect*  
4                   *that the provider of services or supplier*  
5                   *may file for bankruptcy or otherwise cease*  
6                   *to do business or discontinue participation*  
7                   *in the program under this title; or*

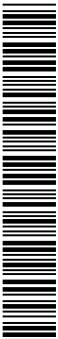
8                   “(ii) *there is an indication of fraud or*  
9                   *abuse committed against the program.*

10                  “(D) *IMMEDIATE COLLECTION IF VIOLATION*  
11                  *OF REPAYMENT PLAN.—If a provider of services*  
12                  *or supplier fails to make a payment in accord-*  
13                  *ance with a repayment plan under this para-*  
14                  *graph, the Secretary may immediately seek to*  
15                  *offset or otherwise recover the total balance out-*  
16                  *standing (including applicable interest) under*  
17                  *the repayment plan.*

18                  “(E) *RELATION TO NO FAULT PROVISION.—*  
19                  *Nothing in this paragraph shall be construed as*  
20                  *affecting the application of section 1870(c) (re-*  
21                  *lating to no adjustment in the cases of certain*  
22                  *overpayments).*

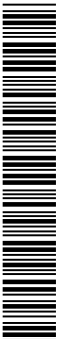
23                  “(2) *LIMITATION ON RECOUPMENT.—*

24                  “(A) *IN GENERAL.—In the case of a pro-*  
25                  *vider of services or supplier that is determined to*



1       *have received an overpayment under this title*  
2       *and that seeks a reconsideration by a qualified*  
3       *independent contractor on such determination*  
4       *under section 1869(b)(1), the Secretary may not*  
5       *take any action (or authorize any other person,*  
6       *including any medicare contractor, as defined in*  
7       *subparagraph (C)) to recoup the overpayment*  
8       *until the date the decision on the reconsideration*  
9       *has been rendered. If the provisions of section*  
10       *1869(b)(1) (providing for such a reconsideration*  
11       *by a qualified independent contractor) are not in*  
12       *effect, in applying the previous sentence any ref-*  
13       *erence to such a reconsideration shall be treated*  
14       *as a reference to a redetermination by the fiscal*  
15       *intermediary or carrier involved.*

16               “(B) *COLLECTION WITH INTEREST.—Inso-*  
17       *far as the determination on such appeal is*  
18       *against the provider of services or supplier, in-*  
19       *terest on the overpayment shall accrue on and*  
20       *after the date of the original notice of overpay-*  
21       *ment. Insofar as such determination against the*  
22       *provider of services or supplier is later reversed,*  
23       *the Secretary shall provide for repayment of the*  
24       *amount recouped plus interest at the same rate*



1           *as would apply under the previous sentence for*  
2           *the period in which the amount was recouped.*

3           “(C) *MEDICARE CONTRACTOR DEFINED.*—  
4           *For purposes of this subsection, the term ‘medi-*  
5           *care contractor’ has the meaning given such term*  
6           *in section 1889(g).*

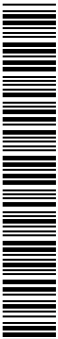
7           “(3) *LIMITATION ON USE OF EXTRAPOLATION.*—  
8           *A medicare contractor may not use extrapolation to*  
9           *determine overpayment amounts to be recovered by*  
10          *recoupment, offset, or otherwise unless—*

11           “(A) *there is a sustained or high level of*  
12           *payment error (as defined by the Secretary by*  
13           *regulation); or*

14           “(B) *documented educational intervention*  
15           *has failed to correct the payment error (as deter-*  
16           *mined by the Secretary).*

17           “(4) *PROVISION OF SUPPORTING DOCUMENTA-*  
18           *TION.*—*In the case of a provider of services or sup-*  
19           *plier with respect to which amounts were previously*  
20           *overpaid, a medicare contractor may request the peri-*  
21           *odic production of records or supporting documenta-*  
22           *tion for a limited sample of submitted claims to en-*  
23           *sure that the previous practice is not continuing.*

24           “(5) *CONSENT SETTLEMENT REFORMS.*—



1           “(A) *IN GENERAL.*—*The Secretary may use*  
2           *a consent settlement (as defined in subparagraph*  
3           *(D)) to settle a projected overpayment.*

4           “(B) *OPPORTUNITY TO SUBMIT ADDITIONAL*  
5           *INFORMATION BEFORE CONSENT SETTLEMENT*  
6           *OFFER.*—*Before offering a provider of services or*  
7           *supplier a consent settlement, the Secretary*  
8           *shall—*

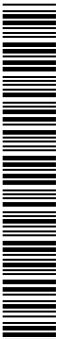
9                   “(i) *communicate to the provider of*  
10           *services or supplier—*

11                           “(I) *that, based on a review of the*  
12                           *medical records requested by the Sec-*  
13                           *retary, a preliminary evaluation of*  
14                           *those records indicates that there would*  
15                           *be an overpayment;*

16                           “(II) *the nature of the problems*  
17                           *identified in such evaluation; and*

18                           “(III) *the steps that the provider*  
19                           *of services or supplier should take to*  
20                           *address the problems; and*

21                           “(ii) *provide for a 45-day period dur-*  
22                           *ing which the provider of services or sup-*  
23                           *plier may furnish additional information*  
24                           *concerning the medical records for the*  
25                           *claims that had been reviewed.*



1           “(C) *CONSENT SETTLEMENT OFFER.*—*The*  
2           *Secretary shall review any additional informa-*  
3           *tion furnished by the provider of services or sup-*  
4           *plier under subparagraph (B)(ii). Taking into*  
5           *consideration such information, the Secretary*  
6           *shall determine if there still appears to be an*  
7           *overpayment. If so, the Secretary—*

8                     “(i) *shall provide notice of such deter-*  
9                     *mination to the provider of services or sup-*  
10                    *plier, including an explanation of the rea-*  
11                    *son for such determination; and*

12                   “(ii) *in order to resolve the overpay-*  
13                    *ment, may offer the provider of services or*  
14                    *supplier—*

15                             “(I) *the opportunity for a statis-*  
16                             *tically valid random sample; or*

17                             “(II) *a consent settlement.*

18           *The opportunity provided under clause (ii)(I)*  
19           *does not waive any appeal rights with respect to*  
20           *the alleged overpayment involved.*

21           “(D) *CONSENT SETTLEMENT DEFINED.*—  
22           *For purposes of this paragraph, the term ‘con-*  
23           *sent settlement’ means an agreement between the*  
24           *Secretary and a provider of services or supplier*  
25           *whereby both parties agree to settle a projected*

1           *overpayment based on less than a statistically*  
2           *valid sample of claims and the provider of serv-*  
3           *ices or supplier agrees not to appeal the claims*  
4           *involved.*

5           “(6) NOTICE OF OVER-UTILIZATION OF CODES.—

6           *The Secretary shall establish, in consultation with or-*  
7           *ganizations representing the classes of providers of*  
8           *services and suppliers, a process under which the Sec-*  
9           *retary provides for notice to classes of providers of*  
10          *services and suppliers served by the contractor in*  
11          *cases in which the contractor has identified that par-*  
12          *ticular billing codes may be overutilized by that class*  
13          *of providers of services or suppliers under the pro-*  
14          *grams under this title (or provisions of title XI inso-*  
15          *far as they relate to such programs).*

16          “(7) PAYMENT AUDITS.—

17                 “(A) WRITTEN NOTICE FOR POST-PAYMENT  
18                 AUDITS.—Subject to subparagraph (C), if a  
19                 medicare contractor decides to conduct a post-  
20                 payment audit of a provider of services or sup-  
21                 plier under this title, the contractor shall provide  
22                 the provider of services or supplier with written  
23                 notice (which may be in electronic form) of the  
24                 intent to conduct such an audit.



1           “(B) *EXPLANATION OF FINDINGS FOR ALL*  
2           *AUDITS.—Subject to subparagraph (C), if a*  
3           *medicare contractor audits a provider of services*  
4           *or supplier under this title, the contractor*  
5           *shall—*

6                     “(i) *give the provider of services or*  
7                     *supplier a full review and explanation of*  
8                     *the findings of the audit in a manner that*  
9                     *is understandable to the provider of services*  
10                    *or supplier and permits the development of*  
11                    *an appropriate corrective action plan;*

12                   “(ii) *inform the provider of services or*  
13                    *supplier of the appeal rights under this title*  
14                    *as well as consent settlement options (which*  
15                    *are at the discretion of the Secretary);*

16                   “(iii) *give the provider of services or*  
17                    *supplier an opportunity to provide addi-*  
18                    *tional information to the contractor; and*

19                   “(iv) *take into account information*  
20                    *provided, on a timely basis, by the provider*  
21                    *of services or supplier under clause (iii).*

22                   “(C) *EXCEPTION.—Subparagraphs (A) and*  
23                    *(B) shall not apply if the provision of notice or*  
24                    *findings would compromise pending law enforce-*





1           *ment activities, whether civil or criminal, or re-*  
2           *veal findings of law enforcement-related audits.*

3           “(8) *STANDARD METHODOLOGY FOR PROBE SAM-*  
4           *PLING.—The Secretary shall establish a standard*  
5           *methodology for medicare contractors to use in select-*  
6           *ing a sample of claims for review in the case of an*  
7           *abnormal billing pattern.”.*

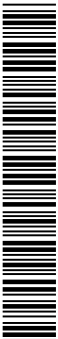
8           **(b) *EFFECTIVE DATES AND DEADLINES.—***

9           **(1) *USE OF REPAYMENT PLANS.—****Section*  
10           *1893(f)(1) of the Social Security Act, as added by*  
11           *subsection (a), shall apply to requests for repayment*  
12           *plans made after the date of the enactment of this Act.*

13           **(2) *LIMITATION ON RECOUPMENT.—****Section*  
14           *1893(f)(2) of the Social Security Act, as added by*  
15           *subsection (a), shall apply to actions taken after the*  
16           *date of the enactment of this Act.*

17           **(3) *USE OF EXTRAPOLATION.—****Section*  
18           *1893(f)(3) of the Social Security Act, as added by*  
19           *subsection (a), shall apply to statistically valid ran-*  
20           *dom samples initiated after the date that is 1 year*  
21           *after the date of the enactment of this Act.*

22           **(4) *PROVISION OF SUPPORTING DOCUMENTA-***  
23           ***TION.—****Section 1893(f)(4) of the Social Security Act,*  
24           *as added by subsection (a), shall take effect on the*  
25           *date of the enactment of this Act.*



1           (5) *CONSENT SETTLEMENT.*—*Section 1893(f)(5)*  
2           *of the Social Security Act, as added by subsection (a),*  
3           *shall apply to consent settlements entered into after*  
4           *the date of the enactment of this Act.*

5           (6) *NOTICE OF OVERUTILIZATION.*—*Not later*  
6           *than 1 year after the date of the enactment of this*  
7           *Act, the Secretary shall first establish the process for*  
8           *notice of overutilization of billing codes under section*  
9           *1893A(f)(6) of the Social Security Act, as added by*  
10          *subsection (a).*

11          (7) *PAYMENT AUDITS.*—*Section 1893A(f)(7) of*  
12          *the Social Security Act, as added by subsection (a),*  
13          *shall apply to audits initiated after the date of the*  
14          *enactment of this Act.*

15          (8) *STANDARD FOR ABNORMAL BILLING PAT-*  
16          *TERNS.*—*Not later than 1 year after the date of the*  
17          *enactment of this Act, the Secretary shall first estab-*  
18          *lish a standard methodology for selection of sample*  
19          *claims for abnormal billing patterns under section*  
20          *1893(f)(8) of the Social Security Act, as added by*  
21          *subsection (a).*

22   **SEC. 406. PROVIDER ENROLLMENT PROCESS; RIGHT OF AP-**  
23           **PEAL.**

24          (a) *IN GENERAL.*—*Section 1866 (42 U.S.C. 1395cc)*  
25          *is amended—*

1           (1) *by adding at the end of the heading the fol-*  
2           *lowing: “; ENROLLMENT PROCESSES”; and*

3           (2) *by adding at the end the following new sub-*  
4           *section:*

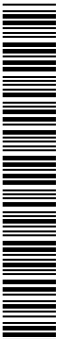
5           “(j) *ENROLLMENT PROCESS FOR PROVIDERS OF SERV-*  
6           *ICES AND SUPPLIERS.—*

7           “(1) *ENROLLMENT PROCESS.—*

8                   “(A) *IN GENERAL.—The Secretary shall es-*  
9                   *tablish by regulation a process for the enrollment*  
10                   *of providers of services and suppliers under this*  
11                   *title.*

12                   “(B) *DEADLINES.—The Secretary shall es-*  
13                   *tablish by regulation procedures under which*  
14                   *there are deadlines for actions on applications*  
15                   *for enrollment (and, if applicable, renewal of en-*  
16                   *rollment). The Secretary shall monitor the per-*  
17                   *formance of medicare administrative contractors*  
18                   *in meeting the deadlines established under this*  
19                   *subparagraph.*

20                   “(C) *CONSULTATION BEFORE CHANGING*  
21                   *PROVIDER ENROLLMENT FORMS.—The Secretary*  
22                   *shall consult with providers of services and sup-*  
23                   *pliers before making changes in the provider en-*  
24                   *rollment forms required of such providers and*



1           *suppliers to be eligible to submit claims for*  
2           *which payment may be made under this title.*

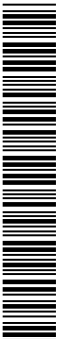
3           “(2) *HEARING RIGHTS IN CASES OF DENIAL OR*  
4           *NON-RENEWAL.*—*A provider of services or supplier*  
5           *whose application to enroll (or, if applicable, to renew*  
6           *enrollment) under this title is denied may have a*  
7           *hearing and judicial review of such denial under the*  
8           *procedures that apply under subsection (h)(1)(A) to a*  
9           *provider of services that is dissatisfied with a deter-*  
10          *mination by the Secretary.”.*

11          *(b) EFFECTIVE DATES.*—

12                 *(1) ENROLLMENT PROCESS.*—*The Secretary shall*  
13                 *provide for the establishment of the enrollment process*  
14                 *under section 1866(j)(1) of the Social Security Act, as*  
15                 *added by subsection (a)(2), within 6 months after the*  
16                 *date of the enactment of this Act.*

17                 *(2) CONSULTATION.*—*Section 1866(j)(1)(C) of*  
18                 *the Social Security Act, as added by subsection*  
19                 *(a)(2), shall apply with respect to changes in provider*  
20                 *enrollment forms made on or after January 1, 2004.*

21                 *(3) HEARING RIGHTS.*—*Section 1866(j)(2) of the*  
22                 *Social Security Act, as added by subsection (a)(2),*  
23                 *shall apply to denials occurring on or after such date*  
24                 *(not later than 1 year after the date of the enactment*  
25                 *of this Act) as the Secretary specifies.*

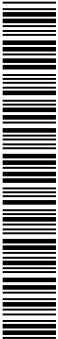


1 **SEC. 407. PROCESS FOR CORRECTION OF MINOR ERRORS**  
2 **AND OMISSIONS WITHOUT PURSUING AP-**  
3 **PEALS PROCESS.**

4 (a) *CLAIMS.*—*The Secretary shall develop, in consulta-*  
5 *tion with appropriate medicare contractors (as defined in*  
6 *section 1889(g) of the Social Security Act, as inserted by*  
7 *section 301(a)(1)) and representatives of providers of serv-*  
8 *ices and suppliers, a process whereby, in the case of minor*  
9 *errors or omissions (as defined by the Secretary) that are*  
10 *detected in the submission of claims under the programs*  
11 *under title XVIII of such Act, a provider of services or sup-*  
12 *plier is given an opportunity to correct such an error or*  
13 *omission without the need to initiate an appeal. Such proc-*  
14 *ess shall include the ability to resubmit corrected claims.*

15 (b) *PERMITTING USE OF CORRECTED AND SUPPLE-*  
16 *MENTARY DATA.*—

17 (1) *IN GENERAL.*—*Section 1886(d)(10)(D)(vi)*  
18 *(42 U.S.C. 1395ww(d)(10)(D)(vi)) is amended by*  
19 *adding after subclause (II) at the end the following:*  
20 *“Notwithstanding subclause (I), a hospital may submit,*  
21 *and the Secretary may accept upon verification, data that*  
22 *corrects or supplements the data described in such subclause*  
23 *without regard to whether the corrected or supplementary*  
24 *data relate to a cost report that has been settled.”.*

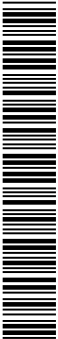


1           (2) *EFFECTIVE DATE.*—*The amendment made by*  
2           *paragraph (1) shall apply to fiscal years beginning*  
3           *with fiscal year 2004.*

4           (3) *SUBMITTAL AND RESUBMITTAL OF APPLICA-*  
5           *TIONS PERMITTED FOR FISCAL YEAR 2004.*—

6                   (A) *IN GENERAL.*—*Notwithstanding any*  
7                   *other provision of law, a hospital may submit*  
8                   *(or resubmit) an application for a change de-*  
9                   *scribed in section 1886(d)(10)(C)(i)(II) of the*  
10                  *Social Security Act for fiscal year 2004 if the*  
11                  *hospital demonstrates on a timely basis to the*  
12                  *satisfaction of the Secretary that the use of cor-*  
13                  *rected or supplementary data under the amend-*  
14                  *ment made by paragraph (1) would materially*  
15                  *affect the approval of such an application.*

16                  (B) *APPLICATION OF BUDGET NEU-*  
17                  *TRALITY.*—*If one or more hospital's applications*  
18                  *are approved as a result of paragraph (1) and*  
19                  *subparagraph (A) for fiscal year 2004, the Sec-*  
20                  *retary shall make a proportional adjustment in*  
21                  *the standardized amounts determined under sec-*  
22                  *tion 1886(d)(3) of the Social Security Act (42*  
23                  *U.S.C. 1395ww(d)(3)) for fiscal year 2004 to as-*  
24                  *sure that approval of such applications does not*  
25                  *result in aggregate payments under section*



1           1886(d) of such Act that are greater or less than  
2           those that would otherwise be made if paragraph  
3           (1) and subparagraph (A) did not apply.

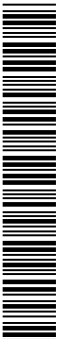
4   **SEC. 408. PRIOR DETERMINATION PROCESS FOR CERTAIN**  
5                   **ITEMS AND SERVICES; ADVANCE BENE-**  
6                   **FICIARY NOTICES.**

7           (a) *IN GENERAL.*—Section 1869 (42 U.S.C. 1395ff(b)),  
8   *as amended by sections 521 and 522 of BIPA and section*  
9   *403(d)(2)(B), is further amended by adding at the end the*  
10 *following new subsection:*

11           “(h) *PRIOR DETERMINATION PROCESS FOR CERTAIN*  
12 *ITEMS AND SERVICES.*—

13                   “(1) *ESTABLISHMENT OF PROCESS.*—

14                           “(A) *IN GENERAL.*—With respect to a medi-  
15                   *care administrative contractor that has a con-*  
16                   *tract under section 1874A that provides for mak-*  
17                   *ing payments under this title with respect to eli-*  
18                   *gible items and services described in subpara-*  
19                   *graph (C), the Secretary shall establish a prior*  
20                   *determination process that meets the require-*  
21                   *ments of this subsection and that shall be applied*  
22                   *by such contractor in the case of eligible request-*  
23                   *ers.*



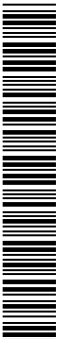
1           “(B) *ELIGIBLE REQUESTER.*—For purposes  
2           of this subsection, each of the following shall be  
3           an eligible requester:

4                   “(i) *A physician, but only with respect*  
5                   *to eligible items and services for which the*  
6                   *physician may be paid directly.*

7                   “(ii) *An individual entitled to benefits*  
8                   *under this title, but only with respect to an*  
9                   *item or service for which the individual re-*  
10                  *ceives, from the physician who may be paid*  
11                  *directly for the item or service, an advance*  
12                  *beneficiary notice under section 1879(a)*  
13                  *that payment may not be made (or may no*  
14                  *longer be made) for the item or service*  
15                  *under this title.*

16           “(C) *ELIGIBLE ITEMS AND SERVICES.*—For  
17           purposes of this subsection and subject to para-  
18           graph (2), eligible items and services are items  
19           and services which are physicians’ services (as  
20           defined in paragraph (4)(A) of section 1848(f)  
21           for purposes of calculating the sustainable  
22           growth rate under such section).

23           “(2) *SECRETARIAL FLEXIBILITY.*—The Secretary  
24           shall establish by regulation reasonable limits on the  
25           categories of eligible items and services for which a



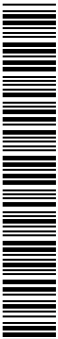


1       *prior determination of coverage may be requested*  
2       *under this subsection. In establishing such limits, the*  
3       *Secretary may consider the dollar amount involved*  
4       *with respect to the item or service, administrative*  
5       *costs and burdens, and other relevant factors.*

6               “(3) *REQUEST FOR PRIOR DETERMINATION.*—

7               “(A) *IN GENERAL.*—Subject to paragraph  
8       *(2), under the process established under this sub-*  
9       *section an eligible requester may submit to the*  
10       *contractor a request for a determination, before*  
11       *the furnishing of an eligible item or service in-*  
12       *volved as to whether the item or service is cov-*  
13       *ered under this title consistent with the applica-*  
14       *ble requirements of section 1862(a)(1)(A) (relat-*  
15       *ing to medical necessity).*

16               “(B) *ACCOMPANYING DOCUMENTATION.*—  
17       *The Secretary may require that the request be*  
18       *accompanied by a description of the item or*  
19       *service, supporting documentation relating to the*  
20       *medical necessity for the item or service, and*  
21       *any other appropriate documentation. In the*  
22       *case of a request submitted by an eligible re-*  
23       *quester who is described in paragraph (1)(B)(ii),*  
24       *the Secretary may require that the request also*



1           *be accompanied by a copy of the advance bene-*  
2           *ficiary notice involved.*

3           “(4) *RESPONSE TO REQUEST.*—

4                   “(A) *IN GENERAL.*—Under such process, the  
5           contractor shall provide the eligible requester  
6           with written notice of a determination as to  
7           whether—

8                           “(i) *the item or service is so covered;*

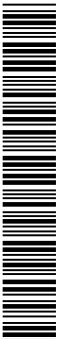
9                           “(ii) *the item or service is not so cov-*  
10                          *ered; or*

11                          “(iii) *the contractor lacks sufficient in-*  
12                          *formation to make a coverage determina-*  
13                          *tion.*

14           *If the contractor makes the determination de-*  
15           *scribed in clause (iii), the contractor shall in-*  
16           *clude in the notice a description of the addi-*  
17           *tional information required to make the coverage*  
18           *determination.*

19                   “(B) *DEADLINE TO RESPOND.*—Such notice  
20           shall be provided within the same time period as  
21           the time period applicable to the contractor pro-  
22           viding notice of initial determinations on a  
23           claim for benefits under subsection (a)(2)(A).

24                   “(C) *INFORMING BENEFICIARY IN CASE OF*  
25           *PHYSICIAN REQUEST.*—In the case of a request



1           *in which an eligible requester is not the indi-*  
2           *vidual described in paragraph (1)(B)(ii), the*  
3           *process shall provide that the individual to*  
4           *whom the item or service is proposed to be fur-*  
5           *nished shall be informed of any determination*  
6           *described in clause (ii) (relating to a determina-*  
7           *tion of non-coverage) and the right (referred to*  
8           *in paragraph (6)(B)) to obtain the item or serv-*  
9           *ice and have a claim submitted for the item or*  
10          *service.*

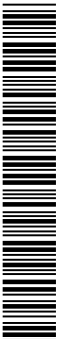
11          “(5) *EFFECT OF DETERMINATIONS.*—

12                 “(A) *BINDING NATURE OF POSITIVE DETER-*  
13                 *MINATION.*—*If the contractor makes the deter-*  
14                 *mination described in paragraph (4)(A)(i), such*  
15                 *determination shall be binding on the contractor*  
16                 *in the absence of fraud or evidence of misrepre-*  
17                 *sentation of facts presented to the contractor.*

18                 “(B) *NOTICE AND RIGHT TO REDETERMINA-*  
19                 *TION IN CASE OF A DENIAL.*—

20                         “(i) *IN GENERAL.*—*If the contractor*  
21                         *makes the determination described in para-*  
22                         *graph (4)(A)(ii)—*

23                                 “(I) *the eligible requester has the*  
24                                 *right to a redetermination by the con-*

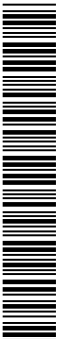


1                   tractor on the determination that the  
2                   item or service is not so covered; and  
3                   “(II) the contractor shall include  
4                   in notice under paragraph (4)(A) a  
5                   brief explanation of the basis for the  
6                   determination, including on what na-  
7                   tional or local coverage or noncoverage  
8                   determination (if any) the determina-  
9                   tion is based, and the right to such a  
10                  redetermination.

11               “(ii) *DEADLINE FOR REDETERMINA-*  
12               *TIONS.—*The contractor shall complete and  
13               provide notice of such redetermination with-  
14               in the same time period as the time period  
15               applicable to the contractor providing notice  
16               of redeterminations relating to a claim for  
17               benefits under subsection (a)(3)(C)(ii).

18               “(6) *LIMITATION ON FURTHER REVIEW.—*

19               “(A) *IN GENERAL.—*Contractor determina-  
20               tions described in paragraph (4)(A)(ii) or  
21               (4)(A)(iii) (and redeterminations made under  
22               paragraph (5)(B)), relating to pre-service claims  
23               are not subject to further administrative appeal  
24               or judicial review under this section or other-  
25               wise.

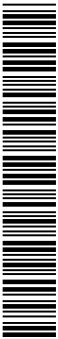


1                   “(B) *DECISION NOT TO SEEK PRIOR DETER-*  
2                   *MINATION OR NEGATIVE DETERMINATION DOES*  
3                   *NOT IMPACT RIGHT TO OBTAIN SERVICES, SEEK*  
4                   *REIMBURSEMENT, OR APPEAL RIGHTS.—Nothing*  
5                   *in this subsection shall be construed as affecting*  
6                   *the right of an individual who—*

7                   “(i) *decides not to seek a prior deter-*  
8                   *mination under this subsection with respect*  
9                   *to items or services; or*

10                  “(ii) *seeks such a determination and*  
11                  *has received a determination described in*  
12                  *paragraph (4)(A)(ii),*  
13                  *from receiving (and submitting a claim for) such*  
14                  *items services and from obtaining administrative*  
15                  *or judicial review respecting such claim under*  
16                  *the other applicable provisions of this section.*  
17                  *Failure to seek a prior determination under this*  
18                  *subsection with respect to items and services*  
19                  *shall not be taken into account in such adminis-*  
20                  *trative or judicial review.*

21                  “(C) *NO PRIOR DETERMINATION AFTER RE-*  
22                  *CEIPT OF SERVICES.—Once an individual is pro-*  
23                  *vided items and services, there shall be no prior*  
24                  *determination under this subsection with respect*  
25                  *to such items or services.”.*



1       (b) *EFFECTIVE DATE; TRANSITION.*—

2           (1) *EFFECTIVE DATE.*—*The Secretary shall es-*  
3       *tablish the prior determination process under the*  
4       *amendment made by subsection (a) in such a manner*  
5       *as to provide for the acceptance of requests for deter-*  
6       *minations under such process filed not later than 18*  
7       *months after the date of the enactment of this Act.*

8           (2) *TRANSITION.*—*During the period in which*  
9       *the amendment made by subsection (a) has become ef-*  
10      *fective but contracts are not provided under section*  
11      *1874A of the Social Security Act with medicare ad-*  
12      *ministrative contractors, any reference in section*  
13      *1869(g) of such Act (as added by such amendment) to*  
14      *such a contractor is deemed a reference to a fiscal*  
15      *intermediary or carrier with an agreement under sec-*  
16      *tion 1816, or contract under section 1842, respec-*  
17      *tively, of such Act.*

18          (3) *LIMITATION ON APPLICATION TO SGR.*—*For*  
19      *purposes of applying section 1848(f)(2)(D) of the So-*  
20      *cial Security Act (42 U.S.C. 1395w–4(f)(2)(D)), the*  
21      *amendment made by subsection (a) shall not be con-*  
22      *sidered to be a change in law or regulation.*

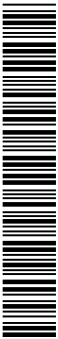
23          (c) *PROVISIONS RELATING TO ADVANCE BENEFICIARY*  
24      *NOTICES; REPORT ON PRIOR DETERMINATION PROCESS.*—



1           (1) *DATA COLLECTION.*—*The Secretary shall es-*  
2           *tablish a process for the collection of information on*  
3           *the instances in which an advance beneficiary notice*  
4           *(as defined in paragraph (4)) has been provided and*  
5           *on instances in which a beneficiary indicates on such*  
6           *a notice that the beneficiary does not intend to seek*  
7           *to have the item or service that is the subject of the*  
8           *notice furnished.*

9           (2) *OUTREACH AND EDUCATION.*—*The Secretary*  
10          *shall establish a program of outreach and education*  
11          *for beneficiaries and providers of services and other*  
12          *persons on the appropriate use of advance beneficiary*  
13          *notices and coverage policies under the medicare pro-*  
14          *gram.*

15          (3) *GAO REPORT REPORT ON USE OF ADVANCE*  
16          *BENEFICIARY NOTICES.*—*Not later than 18 months*  
17          *after the date on which section 1869(g) of the Social*  
18          *Security Act (as added by subsection (a)) takes effect,*  
19          *the Comptroller General of the United States shall*  
20          *submit to Congress a report on the use of advance*  
21          *beneficiary notices under title XVIII of such Act.*  
22          *Such report shall include information concerning the*  
23          *providers of services and other persons that have pro-*  
24          *vided such notices and the response of beneficiaries to*  
25          *such notices.*

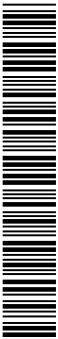


1           (4) *GAO REPORT ON USE OF PRIOR DETERMINA-*  
2           *TION PROCESS.*—Not later than 18 months after the  
3           date on which section 1869(g) of the Social Security  
4           Act (as added by subsection (a)) takes effect, the  
5           Comptroller General of the United States shall submit  
6           to Congress a report on the use of the prior deter-  
7           mination process under such section. Such report  
8           shall include—

9                   (A) information concerning the types of  
10                  procedures for which a prior determination has  
11                  been sought, determinations made under the  
12                  process, and changes in receipt of services result-  
13                  ing from the application of such process; and

14                   (B) an evaluation of whether the process  
15                  was useful for physicians (and other suppliers)  
16                  and beneficiaries, whether it was timely, and  
17                  whether the amount of information required was  
18                  burdensome to physicians and beneficiaries.

19           (5) *ADVANCE BENEFICIARY NOTICE DEFINED.*—  
20           In this subsection, the term “advance beneficiary no-  
21           tice” means a written notice provided under section  
22           1879(a) of the Social Security Act (42 U.S.C.  
23           1395pp(a)) to an individual entitled to benefits under  
24           part A or B of title XVIII of such Act before items  
25           or services are furnished under such part in cases





1        *where a provider of services or other person that*  
2        *would furnish the item or service believes that pay-*  
3        *ment will not be made for some or all of such items*  
4        *or services under such title.*

5        ***TITLE V—MISCELLANEOUS***  
6        ***PROVISIONS***

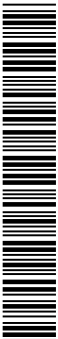
7        ***SEC. 501. POLICY DEVELOPMENT REGARDING EVALUATION***  
8                ***AND MANAGEMENT (E & M) DOCUMENTATION***  
9                ***GUIDELINES.***

10        *(a) IN GENERAL.—The Secretary may not implement*  
11        *any new documentation guidelines for evaluation and man-*  
12        *agement physician services under the title XVIII of the So-*  
13        *cial Security Act on or after the date of the enactment of*  
14        *this Act unless the Secretary—*

15                *(1) has developed the guidelines in collaboration*  
16        *with practicing physicians (including both generalists*  
17        *and specialists) and provided for an assessment of the*  
18        *proposed guidelines by the physician community;*

19                *(2) has established a plan that contains specific*  
20        *goals, including a schedule, for improving the use of*  
21        *such guidelines;*

22                *(3) has conducted appropriate and representative*  
23        *pilot projects under subsection (b) to test modifica-*  
24        *tions to the evaluation and management documenta-*  
25        *tion guidelines;*



1           (4) *finds that the objectives described in sub-*  
2           *section (c) will be met in the implementation of such*  
3           *guidelines; and*

4           (5) *has established, and is implementing, a pro-*  
5           *gram to educate physicians on the use of such guide-*  
6           *lines and that includes appropriate outreach.*

7   *The Secretary shall make changes to the manner in which*  
8   *existing evaluation and management documentation guide-*  
9   *lines are implemented to reduce paperwork burdens on phy-*  
10   *sicians.*

11       (b) *PILOT PROJECTS TO TEST EVALUATION AND MAN-*  
12   *AGEMENT DOCUMENTATION GUIDELINES.—*

13           (1) *IN GENERAL.—The Secretary shall conduct*  
14           *under this subsection appropriate and representative*  
15           *pilot projects to test new evaluation and management*  
16           *documentation guidelines referred to in subsection*  
17           *(a).*

18           (2) *LENGTH AND CONSULTATION.—Each pilot*  
19           *project under this subsection shall—*

20                   (A) *be voluntary;*

21                   (B) *be of sufficient length as determined by*  
22                   *the Secretary to allow for preparatory physician*  
23                   *and medicare contractor education, analysis,*  
24                   *and use and assessment of potential evaluation*  
25                   *and management guidelines; and*

1           (C) be conducted, in development and  
2           throughout the planning and operational stages  
3           of the project, in consultation with practicing  
4           physicians (including both generalists and spe-  
5           cialists).

6           (3) *RANGE OF PILOT PROJECTS.*—Of the pilot  
7           projects conducted under this subsection—

8           (A) at least one shall focus on a peer review  
9           method by physicians (not employed by a medi-  
10          care contractor) which evaluates medical record  
11          information for claims submitted by physicians  
12          identified as statistical outliers relative to defini-  
13          tions published in the *Current Procedures Ter-*  
14          minology (CPT) code book of the American Med-  
15          ical Association;

16          (B) at least one shall focus on an alter-  
17          native method to detailed guidelines based on  
18          physician documentation of face to face encoun-  
19          ter time with a patient;

20          (C) at least one shall be conducted for serv-  
21          ices furnished in a rural area and at least one  
22          for services furnished outside such an area; and

23          (D) at least one shall be conducted in a set-  
24          ting where physicians bill under physicians'  
25          services in teaching settings and at least one



1           *shall be conducted in a setting other than a*  
2           *teaching setting.*

3           (4) *BANNING OF TARGETING OF PILOT PROJECT*  
4           *PARTICIPANTS.—Data collected under this subsection*  
5           *shall not be used as the basis for overpayment de-*  
6           *mands or post-payment audits. Such limitation ap-*  
7           *plies only to claims filed as part of the pilot project*  
8           *and lasts only for the duration of the pilot project*  
9           *and only as long as the provider is a participant in*  
10          *the pilot project.*

11          (5) *STUDY OF IMPACT.—Each pilot project shall*  
12          *examine the effect of the new evaluation and manage-*  
13          *ment documentation guidelines on—*

14                 (A) *different types of physician practices,*  
15                 *including those with fewer than 10 full-time-*  
16                 *equivalent employees (including physicians); and*

17                 (B) *the costs of physician compliance, in-*  
18                 *cluding education, implementation, auditing,*  
19                 *and monitoring.*

20          (6) *PERIODIC REPORTS.—The Secretary shall*  
21          *submit to Congress periodic reports on the pilot*  
22          *projects under this subsection.*

23          (c) *OBJECTIVES FOR EVALUATION AND MANAGEMENT*  
24          *GUIDELINES.—The objectives for modified evaluation and*



1 *management documentation guidelines developed by the*  
2 *Secretary shall be to—*

3       (1) *identify clinically relevant documentation*  
4       *needed to code accurately and assess coding levels ac-*  
5       *curately;*

6       (2) *decrease the level of non-clinically pertinent*  
7       *and burdensome documentation time and content in*  
8       *the physician's medical record;*

9       (3) *increase accuracy by reviewers; and*

10       (4) *educate both physicians and reviewers.*

11       (d) *STUDY OF SIMPLER, ALTERNATIVE SYSTEMS OF*  
12 *DOCUMENTATION FOR PHYSICIAN CLAIMS.—*

13       (1) *STUDY.—The Secretary shall carry out a*  
14       *study of the matters described in paragraph (2).*

15       (2) *MATTERS DESCRIBED.—The matters referred*  
16       *to in paragraph (1) are—*

17               (A) *the development of a simpler, alter-*  
18               *native system of requirements for documentation*  
19               *accompanying claims for evaluation and man-*  
20               *agement physician services for which payment is*  
21               *made under title XVIII of the Social Security*  
22               *Act; and*

23               (B) *consideration of systems other than cur-*  
24               *rent coding and documentation requirements for*  
25               *payment for such physician services.*

1           (3) *CONSULTATION WITH PRACTICING PHYSI-*  
2           *CIANs.—In designing and carrying out the study*  
3           *under paragraph (1), the Secretary shall consult with*  
4           *practicing physicians, including physicians who are*  
5           *part of group practices and including both generalists*  
6           *and specialists.*

7           (4) *APPLICATION OF HIPAA UNIFORM CODING RE-*  
8           *QUIREMENTS.—In developing an alternative system*  
9           *under paragraph (2), the Secretary shall consider re-*  
10          *quirements of administrative simplification under*  
11          *part C of title XI of the Social Security Act.*

12          (5) *REPORT TO CONGRESS.—(A) Not later than*  
13          *October 1, 2005, the Secretary shall submit to Con-*  
14          *gress a report on the results of the study conducted*  
15          *under paragraph (1).*

16          (B) *The Medicare Payment Advisory Commis-*  
17          *sion shall conduct an analysis of the results of the*  
18          *study included in the report under subparagraph (A)*  
19          *and shall submit a report on such analysis to Con-*  
20          *gress.*

21          (e) *STUDY ON APPROPRIATE CODING OF CERTAIN EX-*  
22          *TENDED OFFICE VISITS.—The Secretary shall conduct a*  
23          *study of the appropriateness of coding in cases of extended*  
24          *office visits in which there is no diagnosis made. Not later*  
25          *than October 1, 2005, the Secretary shall submit a report*

1 *to Congress on such study and shall include recommenda-*  
2 *tions on how to code appropriately for such visits in a man-*  
3 *ner that takes into account the amount of time the physi-*  
4 *cian spent with the patient.*

5 *(f) DEFINITIONS.—In this section—*

6 *(1) the term “rural area” has the meaning given*  
7 *that term in section 1886(d)(2)(D) of the Social Secu-*  
8 *rity Act, 42 U.S.C. 1395ww(d)(2)(D); and*

9 *(2) the term “teaching settings” are those set-*  
10 *tings described in section 415.150 of title 42, Code of*  
11 *Federal Regulations.*

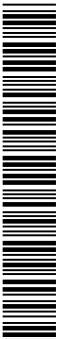
12 **SEC. 502. IMPROVEMENT IN OVERSIGHT OF TECHNOLOGY**  
13 **AND COVERAGE.**

14 *(a) COUNCIL FOR TECHNOLOGY AND INNOVATION.—*  
15 *Section 1868 (42 U.S.C. 1395ee), as amended by section*  
16 *301(a), is amended by adding at the end the following new*  
17 *subsection:*

18 *“(c) COUNCIL FOR TECHNOLOGY AND INNOVATION.—*

19 *“(1) ESTABLISHMENT.—The Secretary shall es-*  
20 *tablish a Council for Technology and Innovation*  
21 *within the Centers for Medicare & Medicaid Services*  
22 *(in this section referred to as ‘CMS’).*

23 *“(2) COMPOSITION.—The Council shall be com-*  
24 *posed of senior CMS staff and clinicians and shall be*  
25 *chaired by the Executive Coordinator for Technology*



1       *and Innovation (appointed or designated under para-*  
2       *graph (4)).*

3               “(3) *DUTIES.—The Council shall coordinate the*  
4       *activities of coverage, coding, and payment processes*  
5       *under this title with respect to new technologies and*  
6       *procedures, including new drug therapies, and shall*  
7       *coordinate the exchange of information on new tech-*  
8       *nologies between CMS and other entities that make*  
9       *similar decisions.*

10              “(4) *EXECUTIVE COORDINATOR FOR TECH-*  
11       *NOLOGY AND INNOVATION.—The Secretary shall ap-*  
12       *point (or designate) a noncareer appointee (as defined*  
13       *in section 3132(a)(7) of title 5, United States Code)*  
14       *who shall serve as the Executive Coordinator for Tech-*  
15       *nology and Innovation. Such executive coordinator*  
16       *shall report to the Administrator of CMS, shall chair*  
17       *the Council, shall oversee the execution of its duties,*  
18       *and shall serve as a single point of contact for outside*  
19       *groups and entities regarding the coverage, coding,*  
20       *and payment processes under this title.”.*

21       (b) *METHODS FOR DETERMINING PAYMENT BASIS*  
22       *FOR NEW LAB TESTS.—Section 1833(h) (42 U.S.C.*  
23       *1395l(h)) is amended by adding at the end the following:*  
24              “(8)(A) *The Secretary shall establish by regulation*  
25       *procedures for determining the basis for, and amount of,*



1 *payment under this subsection for any clinical diagnostic*  
2 *laboratory test with respect to which a new or substantially*  
3 *revised HCPCS code is assigned on or after January 1,*  
4 *2005 (in this paragraph referred to as ‘new tests’).*

5 “(B) *Determinations under subparagraph (A) shall be*  
6 *made only after the Secretary—*

7 “(i) *makes available to the public (through an*  
8 *Internet site and other appropriate mechanisms) a*  
9 *list that includes any such test for which establish-*  
10 *ment of a payment amount under this subsection is*  
11 *being considered for a year;*

12 “(ii) *on the same day such list is made avail-*  
13 *able, causes to have published in the Federal Register*  
14 *notice of a meeting to receive comments and rec-*  
15 *ommendations (and data on which recommendations*  
16 *are based) from the public on the appropriate basis*  
17 *under this subsection for establishing payment*  
18 *amounts for the tests on such list;*

19 “(iii) *not less than 30 days after publication of*  
20 *such notice convenes a meeting, that includes rep-*  
21 *resentatives of officials of the Centers for Medicare &*  
22 *Medicaid Services involved in determining payment*  
23 *amounts, to receive such comments and recommenda-*  
24 *tions (and data on which the recommendations are*  
25 *based);*

1           “(iv) taking into account the comments and rec-  
2           ommendations (and accompanying data) received at  
3           such meeting, develops and makes available to the  
4           public (through an Internet site and other appro-  
5           priate mechanisms) a list of proposed determinations  
6           with respect to the appropriate basis for establishing  
7           a payment amount under this subsection for each  
8           such code, together with an explanation of the reasons  
9           for each such determination, the data on which the  
10          determinations are based, and a request for public  
11          written comments on the proposed determination; and

12          “(v) taking into account the comments received  
13          during the public comment period, develops and  
14          makes available to the public (through an Internet  
15          site and other appropriate mechanisms) a list of final  
16          determinations of the payment amounts for such tests  
17          under this subsection, together with the rationale for  
18          each such determination, the data on which the deter-  
19          minations are based, and responses to comments and  
20          suggestions received from the public.

21          “(C) Under the procedures established pursuant to sub-  
22          paragraph (A), the Secretary shall—

23               “(i) set forth the criteria for making determina-  
24          tions under subparagraph (A); and



1           “(ii) make available to the public the data (other  
2           than proprietary data) considered in making such de-  
3           terminations.

4           “(D) The Secretary may convene such further public  
5           meetings to receive public comments on payment amounts  
6           for new tests under this subsection as the Secretary deems  
7           appropriate.

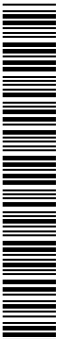
8           “(E) For purposes of this paragraph:

9           “(i) The term ‘HCPCS’ refers to the Health Care  
10          Procedure Coding System.

11          “(ii) A code shall be considered to be ‘substan-  
12          tially revised’ if there is a substantive change to the  
13          definition of the test or procedure to which the code  
14          applies (such as a new analyte or a new methodology  
15          for measuring an existing analyte-specific test).”.

16   **SEC. 503. TREATMENT OF HOSPITALS FOR CERTAIN SERV-**  
17                           **ICES UNDER MEDICARE SECONDARY PAYOR**  
18                           **(MSP) PROVISIONS.**

19          (a) *IN GENERAL.*—The Secretary shall not require a  
20          hospital (including a critical access hospital) to ask ques-  
21          tions (or obtain information) relating to the application of  
22          section 1862(b) of the Social Security Act (relating to medi-  
23          care secondary payor provisions) in the case of reference  
24          laboratory services described in subsection (b), if the Sec-



1 *retary does not impose such requirement in the case of such*  
2 *services furnished by an independent laboratory.*

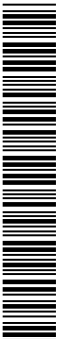
3 (b) *REFERENCE LABORATORY SERVICES DE-*  
4 *SCRIBED.—Reference laboratory services described in this*  
5 *subsection are clinical laboratory diagnostic tests (or the*  
6 *interpretation of such tests, or both) furnished without a*  
7 *face-to-face encounter between the individual entitled to*  
8 *benefits under part A or enrolled under part B, or both,*  
9 *and the hospital involved and in which the hospital submits*  
10 *a claim only for such test or interpretation.*

11 **SEC. 504. EMTALA IMPROVEMENTS.**

12 (a) *PAYMENT FOR EMTALA-MANDATED SCREENING*  
13 *AND STABILIZATION SERVICES.—*

14 (1) *IN GENERAL.—Section 1862 (42 U.S.C.*  
15 *1395y) is amended by inserting after subsection (c)*  
16 *the following new subsection:*

17 “(d) *For purposes of subsection (a)(1)(A), in the case*  
18 *of any item or service that is required to be provided pursu-*  
19 *ant to section 1867 to an individual who is entitled to bene-*  
20 *fits under this title, determinations as to whether the item*  
21 *or service is reasonable and necessary shall be made on the*  
22 *basis of the information available to the treating physician*  
23 *or practitioner (including the patient’s presenting symp-*  
24 *toms or complaint) at the time the item or service was or-*  
25 *dered or furnished by the physician or practitioner (and*



1 *not on the patient's principal diagnosis). When making*  
2 *such determinations with respect to such an item or service,*  
3 *the Secretary shall not consider the frequency with which*  
4 *the item or service was provided to the patient before or*  
5 *after the time of the admission or visit.”.*

6 (2) *EFFECTIVE DATE.—The amendment made by*  
7 *paragraph (1) shall apply to items and services fur-*  
8 *nished on or after January 1, 2004.*

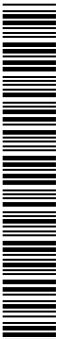
9 (b) *NOTIFICATION OF PROVIDERS WHEN EMTALA IN-*  
10 *VESTIGATION CLOSED.—Section 1867(d) (42 U.S.C. 42*  
11 *U.S.C. 1395dd(d)) is amended by adding at the end the*  
12 *following new paragraph:*

13 “(4) *NOTICE UPON CLOSING AN INVESTIGA-*  
14 *TION.—The Secretary shall establish a procedure to*  
15 *notify hospitals and physicians when an investigation*  
16 *under this section is closed.”.*

17 (c) *PRIOR REVIEW BY PEER REVIEW ORGANIZATIONS*  
18 *IN EMTALA CASES INVOLVING TERMINATION OF PARTICI-*  
19 *PATION.—*

20 (1) *IN GENERAL.—Section 1867(d)(3) (42 U.S.C.*  
21 *1395dd(d)(3)) is amended—*

22 (A) *in the first sentence, by inserting “or in*  
23 *terminating a hospital's participation under this*  
24 *title” after “in imposing sanctions under para-*  
25 *graph (1)”;* and



1           (B) by adding at the end the following new  
2 sentences: “Except in the case in which a delay  
3 would jeopardize the health or safety of individ-  
4 uals, the Secretary shall also request such a re-  
5 view before making a compliance determination  
6 as part of the process of terminating a hospital’s  
7 participation under this title for violations re-  
8 lated to the appropriateness of a medical screen-  
9 ing examination, stabilizing treatment, or an  
10 appropriate transfer as required by this section,  
11 and shall provide a period of 5 days for such re-  
12 view. The Secretary shall provide a copy of the  
13 organization’s report to the hospital or physician  
14 consistent with confidentiality requirements im-  
15 posed on the organization under such part B.”.

16           (2) *EFFECTIVE DATE.*—The amendments made  
17 by paragraph (1) shall apply to terminations of par-  
18 ticipation initiated on or after the date of the enact-  
19 ment of this Act.

20 **SEC. 505. EMERGENCY MEDICAL TREATMENT AND ACTIVE**  
21 **LABOR ACT (EMTALA) TECHNICAL ADVISORY**  
22 **GROUP.**

23           (a) *ESTABLISHMENT.*—The Secretary shall establish a  
24 Technical Advisory Group (in this section referred to as the  
25 “Advisory Group”) to review issues related to the Emer-

1 *gency Medical Treatment and Labor Act (EMTALA) and*  
2 *its implementation. In this section, the term “EMTALA”*  
3 *refers to the provisions of section 1867 of the Social Security*  
4 *Act (42 U.S.C. 1395dd).*

5 *(b) MEMBERSHIP.—The Advisory Group shall be com-*  
6 *posed of 19 members, including the Administrator of the*  
7 *Centers for Medicare & Medicaid Services and the Inspector*  
8 *General of the Department of Health and Human Services*  
9 *and of which—*

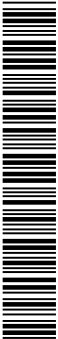
10 *(1) 4 shall be representatives of hospitals, includ-*  
11 *ing at least one public hospital, that have experience*  
12 *with the application of EMTALA and at least 2 of*  
13 *which have not been cited for EMTALA violations;*

14 *(2) 7 shall be practicing physicians drawn from*  
15 *the fields of emergency medicine, cardiology or*  
16 *cardiothoracic surgery, orthopedic surgery, neuro-*  
17 *surgery, pediatrics or a pediatric subspecialty, obstet-*  
18 *rics-gynecology, and psychiatry, with not more than*  
19 *one physician from any particular field;*

20 *(3) 2 shall represent patients;*

21 *(4) 2 shall be staff involved in EMTALA inves-*  
22 *tigations from different regional offices of the Centers*  
23 *for Medicare & Medicaid Services; and*

24 *(5) 1 shall be from a State survey office involved*  
25 *in EMTALA investigations and 1 shall be from a*



1       *peer review organization, both of whom shall be from*  
2       *areas other than the regions represented under para-*  
3       *graph (4).*

4       *In selecting members described in paragraphs (1) through*  
5       *(3), the Secretary shall consider qualified individuals nomi-*  
6       *nated by organizations representing providers and patients.*

7       (c) *GENERAL RESPONSIBILITIES.—The Advisory*  
8       *Group—*

9               *(1) shall review EMTALA regulations;*

10              *(2) may provide advice and recommendations to*  
11       *the Secretary with respect to those regulations and*  
12       *their application to hospitals and physicians;*

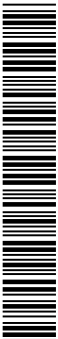
13              *(3) shall solicit comments and recommendations*  
14       *from hospitals, physicians, and the public regarding*  
15       *the implementation of such regulations; and*

16              *(4) may disseminate information on the applica-*  
17       *tion of such regulations to hospitals, physicians, and*  
18       *the public.*

19       (d) *ADMINISTRATIVE MATTERS.—*

20              *(1) CHAIRPERSON.—The members of the Advi-*  
21       *sory Group shall elect a member to serve as chair-*  
22       *person of the Advisory Group for the life of the Advi-*  
23       *sory Group.*

24              *(2) MEETINGS.—The Advisory Group shall first*  
25       *meet at the direction of the Secretary. The Advisory*





1       Group shall then meet twice per year and at such  
2       other times as the Advisory Group may provide.

3       (e) *TERMINATION.*—The Advisory Group shall termi-  
4       nate 30 months after the date of its first meeting.

5       (f) *WAIVER OF ADMINISTRATIVE LIMITATION.*—The  
6       Secretary shall establish the Advisory Group notwith-  
7       standing any limitation that may apply to the number of  
8       advisory committees that may be established (within the  
9       Department of Health and Human Services or otherwise).

10   **SEC. 506. AUTHORIZING USE OF ARRANGEMENTS TO PRO-**  
11                   **VIDE CORE HOSPICE SERVICES IN CERTAIN**  
12                   **CIRCUMSTANCES.**

13       (a) *IN GENERAL.*—Section 1861(dd)(5) (42 U.S.C.  
14       1395x(dd)(5)) is amended by adding at the end the fol-  
15       lowing:

16       “(D) In extraordinary, exigent, or other non-routine  
17       circumstances, such as unanticipated periods of high pa-  
18       tient loads, staffing shortages due to illness or other events,  
19       or temporary travel of a patient outside a hospice pro-  
20       gram’s service area, a hospice program may enter into ar-  
21       rangements with another hospice program for the provision  
22       by that other program of services described in paragraph  
23       (2)(A)(ii)(I). The provisions of paragraph (2)(A)(ii)(II)  
24       shall apply with respect to the services provided under such  
25       arrangements.

1       “(E) A hospice program may provide services de-  
2 scribed in paragraph (1)(A) other than directly by the pro-  
3 gram if the services are highly specialized services of a reg-  
4 istered professional nurse and are provided non-routinely  
5 and so infrequently so that the provision of such services  
6 directly would be impracticable and prohibitively expen-  
7 sive.”.

8       (b) *CONFORMING PAYMENT PROVISION.*—Section  
9 1814(i) (42 U.S.C. 1395f(i)) is amended by adding at the  
10 end the following new paragraph:

11       “(4) In the case of hospice care provided by a hospice  
12 program under arrangements under section 1861(dd)(5)(D)  
13 made by another hospice program, the hospice program that  
14 made the arrangements shall bill and be paid for the hospice  
15 care.”.

16       (c) *EFFECTIVE DATE.*—The amendments made by this  
17 section shall apply to hospice care provided on or after the  
18 date of the enactment of this Act.

19 **SEC. 507. APPLICATION OF OSHA BLOODBORNE PATHO-**  
20 **GENS STANDARD TO CERTAIN HOSPITALS.**

21       (a) *IN GENERAL.*—Section 1866 (42 U.S.C. 1395cc)  
22 is amended—

23               (1) in subsection (a)(1)—

24                       (A) in subparagraph (R), by striking “and”  
25                       at the end;

1                   (B) in subparagraph (S), by striking the  
2                   period at the end and inserting “, and”; and

3                   (C) by inserting after subparagraph (S) the  
4                   following new subparagraph:

5                   “(T) in the case of hospitals that are not other-  
6                   wise subject to the Occupational Safety and Health  
7                   Act of 1970, to comply with the Bloodborne Pathogens  
8                   standard under section 1910.1030 of title 29 of the  
9                   Code of Federal Regulations (or as subsequently redes-  
10                  ignated).”; and

11                  (2) by adding at the end of subsection (b) the fol-  
12                  lowing new paragraph:

13                  “(4)(A) A hospital that fails to comply with the re-  
14                  quirement of subsection (a)(1)(T) (relating to the  
15                  Bloodborne Pathogens standard) is subject to a civil money  
16                  penalty in an amount described in subparagraph (B), but  
17                  is not subject to termination of an agreement under this  
18                  section.

19                  “(B) The amount referred to in subparagraph (A) is  
20                  an amount that is similar to the amount of civil penalties  
21                  that may be imposed under section 17 of the Occupational  
22                  Safety and Health Act of 1970 for a violation of the  
23                  Bloodborne Pathogens standard referred to in subsection  
24                  (a)(1)(T) by a hospital that is subject to the provisions of  
25                  such Act.



1       “(C) *A civil money penalty under this paragraph shall*  
2 *be imposed and collected in the same manner as civil money*  
3 *penalties under subsection (a) of section 1128A are imposed*  
4 *and collected under that section.*”.

5       (b) *EFFECTIVE DATE.*—*The amendments made by this*  
6 *subsection (a) shall apply to hospitals as of July 1, 2004.*

7       **SEC. 508. BIPA-RELATED TECHNICAL AMENDMENTS AND**  
8               **CORRECTIONS.**

9       (a) *TECHNICAL AMENDMENTS RELATING TO ADVISORY*  
10 *COMMITTEE UNDER BIPA SECTION 522.*—(1) *Subsection*  
11 *(i) of section 1114 (42 U.S.C. 1314)—*

12               (A) *is transferred to section 1862 and added at*  
13 *the end of such section; and*

14               (B) *is redesignated as subsection (j).*

15       (2) *Section 1862 (42 U.S.C. 1395y) is amended—*

16               (A) *in the last sentence of subsection (a), by*  
17 *striking “established under section 1114(f)”;* and

18               (B) *in subsection (j), as so transferred and*  
19 *redesignated—*

20                       (i) *by striking “under subsection (f)”;* and

21                       (ii) *by striking “section 1862(a)(1)” and*  
22 *inserting “subsection (a)(1)”.*

23       (b) *TERMINOLOGY CORRECTIONS.*—(1) *Section*  
24 *1869(c)(3)(I)(ii) (42 U.S.C. 1395ff(c)(3)(I)(ii)), as amend-*  
25 *ed by section 521 of BIPA, is amended—*

1           (A) in subclause (III), by striking “policy” and  
2           inserting “determination”; and

3           (B) in subclause (IV), by striking “medical re-  
4           view policies” and inserting “coverage determina-  
5           tions”.

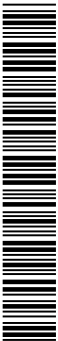
6           (2) Section 1852(a)(2)(C) (42 U.S.C. 1395w-  
7           22(a)(2)(C)) is amended by striking “policy” and “POLICY”  
8           and inserting “determination” each place it appears and  
9           “DETERMINATION”, respectively.

10          (c) REFERENCE CORRECTIONS.—Section 1869(f)(4)  
11          (42 U.S.C. 1395ff(f)(4)), as added by section 522 of BIPA,  
12          is amended—

13               (1) in subparagraph (A)(iv), by striking “sub-  
14               clause (I), (II), or (III)” and inserting “clause (i),  
15               (ii), or (iii)”;

16               (2) in subparagraph (B), by striking “clause  
17               (i)(IV)” and “clause (i)(III)” and inserting “sub-  
18               paragraph (A)(iv)” and “subparagraph (A)(iii)”, re-  
19               spectively; and

20               (3) in subparagraph (C), by striking “clause  
21               (i)”, “subclause (IV)” and “subparagraph (A)” and  
22               inserting “subparagraph (A)”, “clause (iv)” and  
23               “paragraph (1)(A)”, respectively each place it ap-  
24               pears.

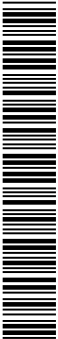


1       (d) *OTHER CORRECTIONS.*—*Effective as if included in*  
2 *the enactment of section 521(c) of BIPA, section 1154(e)*  
3 *(42 U.S.C. 1320c–3(e)) is amended by striking paragraph*  
4 *(5).*

5       (e) *EFFECTIVE DATE.*—*Except as otherwise provided,*  
6 *the amendments made by this section shall be effective as*  
7 *if included in the enactment of BIPA.*

8       **SEC. 509. CONFORMING AUTHORITY TO WAIVE A PROGRAM**  
9                               **EXCLUSION.**

10       *The first sentence of section 1128(c)(3)(B) (42 U.S.C.*  
11 *1320a–7(c)(3)(B)) is amended to read as follows: “Subject*  
12 *to subparagraph (G), in the case of an exclusion under sub-*  
13 *section (a), the minimum period of exclusion shall be not*  
14 *less than five years, except that, upon the request of the ad-*  
15 *ministrator of a Federal health care program (as defined*  
16 *in section 1128B(f)) who determines that the exclusion*  
17 *would impose a hardship on individuals entitled to benefits*  
18 *under part A of title XVIII or enrolled under part B of*  
19 *such title, or both, the Secretary may waive the exclusion*  
20 *under subsection (a)(1), (a)(3), or (a)(4) with respect to*  
21 *that program in the case of an individual or entity that*  
22 *is the sole community physician or sole source of essential*  
23 *specialized services in a community.”.*



1 **SEC. 510. TREATMENT OF CERTAIN DENTAL CLAIMS.**

2 (a) *IN GENERAL.*—Section 1862 (42 U.S.C. 1395y) is  
3 amended by adding after subsection (g) the following new  
4 subsection:

5 “(h)(1) Subject to paragraph (2), a group health plan  
6 (as defined in subsection (a)(1)(A)(v)) providing supple-  
7 mental or secondary coverage to individuals also entitled  
8 to services under this title shall not require a medicare  
9 claims determination under this title for dental benefits spe-  
10 cifically excluded under subsection (a)(12) as a condition  
11 of making a claims determination for such benefits under  
12 the group health plan.

13 “(2) A group health plan may require a claims deter-  
14 mination under this title in cases involving or appearing  
15 to involve inpatient dental hospital services or dental serv-  
16 ices expressly covered under this title pursuant to actions  
17 taken by the Secretary.”.

18 (b) *EFFECTIVE DATE.*—The amendment made by sub-  
19 section (a) shall take effect on the date that is 60 days after  
20 the date of the enactment of this Act.

21 **SEC. 511. FURNISHING HOSPITALS WITH INFORMATION TO**  
22 **COMPUTE DSH FORMULA.**

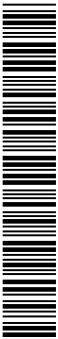
23 Beginning not later than 1 year after the date of the  
24 enactment of this Act, the Secretary shall furnish to sub-  
25 section (d) hospitals (as defined in section 1886(d)(1)(B)  
26 of the Social Security Act, 42 U.S.C. 1395ww(d)(1)(B)) the

1 *data necessary for such hospitals to compute the number*  
2 *of patient days described in subclause (II) of section*  
3 *1886(d)(5)(F)(vi) of the Social Security Act (42 U.S.C.*  
4 *1395ww(d)(5)(F)(vi)) used in computing the dispropor-*  
5 *tionate patient percentage under such section for that hos-*  
6 *pital. Such data shall also be furnished to other hospitals*  
7 *which would qualify for additional payments under part*  
8 *A of title XVIII of the Social Security Act on the basis of*  
9 *such data.*

10 **SEC. 512. MISCELLANEOUS REPORTS, STUDIES, AND PUBLI-**  
11 **CATION REQUIREMENTS.**

12 (a) *GAO REPORTS ON THE PHYSICIAN COMPENSA-*  
13 *TION.—*

14 (1) *SUSTAINABLE GROWTH RATE AND UP-*  
15 *DATES.—Not later than 6 months after the date of the*  
16 *enactment of this Act, the Comptroller General of the*  
17 *United States shall submit to Congress a report on*  
18 *the appropriateness of the updates in the conversion*  
19 *factor under subsection (d)(3) of section 1848 of the*  
20 *Social Security Act (42 U.S.C. 1395w–4), including*  
21 *the appropriateness of the sustainable growth rate for-*  
22 *mula under subsection (f) of such section for 2002*  
23 *and succeeding years. Such report shall examine the*  
24 *stability and predictability of such updates and rate*



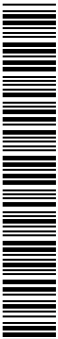


1       *and alternatives for the use of such rate in the up-*  
2       *dates.*

3               (2) *PHYSICIAN COMPENSATION GENERALLY.*—*Not*  
4       *later than 12 months after the date of the enactment*  
5       *of this Act, the Comptroller General shall submit to*  
6       *Congress a report on all aspects of physician com-*  
7       *ensation for services furnished under title XVIII of*  
8       *the Social Security Act, and how those aspects inter-*  
9       *act and the effect on appropriate compensation for*  
10       *physician services. Such report shall review alter-*  
11       *natives for the physician fee schedule under section*  
12       *1848 of such title (42 U.S.C. 1395w-4).*

13              (b) *ANNUAL PUBLICATION OF LIST OF NATIONAL COV-*  
14       *ERAGE DETERMINATIONS.*—*The Secretary shall provide, in*  
15       *an appropriate annual publication available to the public,*  
16       *a list of national coverage determinations made under title*  
17       *XVIII of the Social Security Act in the previous year and*  
18       *information on how to get more information with respect*  
19       *to such determinations.*

20              (c) *GAO REPORT ON FLEXIBILITY IN APPLYING HOME*  
21       *HEALTH CONDITIONS OF PARTICIPATION TO PATIENTS*  
22       *WHO ARE NOT MEDICARE BENEFICIARIES.*—*Not later than*  
23       *6 months after the date of the enactment of this Act, the*  
24       *Comptroller General of the United States shall submit to*  
25       *Congress a report on the implications if there were flexi-*



1 bility in the application of the medicare conditions of par-  
2 ticipation for home health agencies with respect to groups  
3 or types of patients who are not medicare beneficiaries. The  
4 report shall include an analysis of the potential impact of  
5 such flexible application on clinical operations and the re-  
6 cipients of such services and an analysis of methods for  
7 monitoring the quality of care provided to such recipients.

8 (d) *OIG REPORT ON NOTICES RELATING TO USE OF*  
9 *HOSPITAL LIFETIME RESERVE DAYS.*—Not later than 1  
10 year after the date of the enactment of this Act, the Inspec-  
11 tor General of the Department of Health and Human Serv-  
12 ices shall submit a report to Congress on—

13 (1) *the extent to which hospitals provide notice*  
14 *to medicare beneficiaries in accordance with applica-*  
15 *ble requirements before they use the 60 lifetime reserve*  
16 *days described in section 1812(a)(1) of the Social Se-*  
17 *curity Act (42 U.S.C. 1395d(a)(1)); and*

18 (2) *the appropriateness and feasibility of hos-*  
19 *pitals providing a notice to such beneficiaries before*  
20 *they completely exhaust such lifetime reserve days.*

